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Department of
Agriculture

Forest
Service

Pacific
Northwest
Region

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Reply To: 1570-1
(95-06-0012-17)
Date: July 19, 1995

North West Rafter Association
ATTN: Mr. Al Ainsworth
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CERTIFIED MAIL - RETURN
RECEIPT REQUESTED

Dear Mr. Ainsworth:

This letter is my decision on your appeal of the Wild and Scenic Snake River Recreation Management Plan (RMP) and its accompanying Final Environmental Impact Statement (FEIS). R. M. Richmond, Forest Supervisor of the Wallowa-Whitman National Forest, signed the Record of Decision (ROD) approving the RMP for the Snake Wild and Scenic River on October 21, 1994. The RMP replaces Management Area 8 direction in the Forest Plan, and the Snake River Recreation management direction in the Comprehensive Management Plan (CMP). The ROD presented the rationale for selecting the preferred Alternative G, with modifications, for the river corridor area.

Thirty-one appeals of the ROD were filed. I have carefully reviewed the issues raised under both the 36 CFR 217 and 251 appeal procedures and find that many of these appeals contain similar and inter-related issues. I have also examined Forest Supervisor Richmond's decision to implement Alternative G as modified by direction in the ROD. In order to make a reasoned response, these issues cannot be considered individually. Therefore, I have decided to issue a consolidated decision and address these inter-related issues within a broad context.

DECISION

Although every issue that was raised may not be cited in this decision, all of the concerns have been considered. My review of the concerns focuses on the compliance of the FEIS, River Management Plan, and ROD with law, regulations, and policy.

I support the basic management framework that the Forest Supervisor established through the ROD. It is evident that management direction limiting both the amounts and types of uses on the Snake Wild and Scenic River is essential if the river is to be managed towards a semi-primitive condition. The Forest Supervisor's decision demonstrates considerable commitment to move the Snake Wild and Scenic River to a more primitive state.

He is very clear that the decision (ROD, p. 3) will not:

- maximize any single resource use or public service,
- propose recreational use levels, either river or onshore, beyond the biological capability of the river corridor to support that use,
- propose management of the river corridor based solely on values in the market place.

While I strongly support the intent of the Forest Supervisor to protect and enhance the Snake Wild and Scenic River, I find there is a need for him to clarify some issues and to more fully disclose the effects of some elements of his decision. I am, therefore, affirming this decision in part and reversing it in part. My decision and necessary directions are included at the conclusion of each issue and summarized in a concluding section of this letter.

ISSUES

In the following section, I have identified a general theme and then respond to the associated issues in an effort to help you understand how I arrived at my decision.

Environmental Analysis Process

Issue: The appellants raise concerns about: National Forest Management Act significance, public involvement, inter-disciplinary team composition, the CMP process for the HCNRA, range of alternatives, issue identification, FEIS response to comments, and public benefits. The appellants assert the decision should be reversed due to procedural flaws in the planning process.

Response: My review of the concerns focuses on compliance of the FEIS, the ROD, and the Snake Wild and Scenic River RMP with law, regulations, and policy. Although every contention made by the appellants may not be cited specifically in this decision, all of their concerns have been considered. With regard to all of the above concerns, I find that the Forest Supervisor used the correct procedural steps for preparing an EIS and ROD. However, a distinction is made between meeting procedural requirements and providing clarity in the documentation that allows the decisionmaker to make a reasoned choice among alternatives. In this case, as noted by other sections of this decision, the document fails to provide either clarity or necessary documentation for demonstrating a reasoned choice for some specific elements of the decision.

Conclusion: I find the Forest Supervisor correctly followed the environmental analysis procedure and do not find any lack of attention to correct process. However, the document fails to make clear certain aspects of the Forest Supervisor's rationale as discussed in the following issues.

Commercial Use

Issue: The FEIS does not contain a demonstrated public need for outfitter-guide services.

Response: The public has long been provided the opportunity to access the Snake River by outfitter-guide services. This situation occurs for a number of valid reasons including the fact that the river is technically challenging and many potential river users do not have requisite boating skills and/or necessary equipment. Outfitter-guide services also provide opportunities to reach segments of the public who are not aware or informed about the recreational experience of floating the Snake River. Further, the services made available by outfitter-guides have been tested in the market; i.e., the public has used their services at a level sufficient to maintain viable businesses.

The Forest Supervisor did not, however, accept outfitter-guide services without bounds. Specifically, he chose to establish a maximum and minimum number of outfitter-guide permits at all river portals. The maximum number represents continued operation by those outfitters holding priority use permits. The minimum number is set to assure that, if some permits are consolidated as a result of business expansion, there will "continue to be a variety of outfitter services available at all portals to meet the diverse needs of the visitors" (ROD, p. 17).

Conclusion: I affirm the Forest Supervisor's conclusion that continued outfitter-guide services are needed on the Snake River. (Refer to the following discussion which requires further analysis on the effects of allocation and operational issues to outfitters.)

Issue: Commercial permittees claim that the rationale and decision logic used to arrive at administrative actions designed to limit outfitter operations is not disclosed in the record. Further, they argue that operational limitations from this decision will cause disastrous economic consequences to their industry.

Response: Sufficient evidence is required to satisfy the authorized officer that the permittee has the financial capability to operate [36 CFR 251.54(e)(2)]. Decisions that change special use operating plans, and which have a significant effect on permittees' well-being, must be analyzed. The results of a permit-by-permit assessment will provide an understanding of how use allocation and operational limitations affect the economic viability of an outfitter, and, thus, the ability to provide the required level of service to the public.

Conclusion: I find that the ROD and FEIS do not disclose the consequences of how the decision affects the economic viability of outfitter-guides. The Forest Supervisor must further analyze the site-specific effects of allocation and operational limitations on individual permits and then make a new decision relative to commercial use.

Issue: The ROD allocates commercial powerboat launches in error and presents the launch allocation in a deceptive manner.

Response: The allocation of commercial powerboat use is based on the average of the highest 2 out of 5 years (1988-1992) of total commercial powerboat launches for each outfitter as modified by the 5 year average (ROD, p. 12). During each year between 1988 and 1992, each outfitter was required to report each trip for special use permit fee purposes. The "Actual Use Report" contained information on the trip date, number of days on the river, point of origin, destination, and purpose of the trip. Each outfitter was required to submit "Actual Use Reports" attesting to an accurate accounting of business for the year. This report was signed by the outfitter. During the oral hearings, several outfitters said that the requirement for reporting actual use was unclear. In one case, where outfitter use data was not submitted, use was based on Forest Service observations.

Conclusion: I affirm setting the maximum total commercial capacity based on the average of the highest 2 out of 5 years (1988-1992) as modified by the 5 year average. Further, I direct the Forest Supervisor to examine actual use reported for 1988-1992 and amounts paid and verify or refine the numeric estimate of this cap without a new decision. My direction does not guarantee that any individual permittee will retain the level of use they had during the 2 highest years of the base period as modified by the 5 year average. Additionally, operational limitations may limit the Forest Supervisor's ability to allocate the entire capacity as derived from the base period. I am limiting his review of commercial uses to the 1988-1992 base period (refer to preceding discussion which requires further analysis on the effects of allocation and operational issues to outfitters).

Access to Private Land

Issue: Because of foreclosed opportunities to access private lands, the decision causes a "taking" of private property.

Response: The impacts of the proposed restrictions on access to private lands and the rationale provided in the ROD are not adequately analyzed or disclosed in the FEIS and, consequently, the rationale provided in the ROD is not clear. While I agree that restrictions on access to private lands may be appropriate to protect and enhance the values of the Snake River, the policy as adopted cannot be implemented.

Conclusion: In order to assure reasonable and adequate access to private land as required by the Alaska National Interest Lands Conservation Act (ANILCA), I am directing the Forest Supervisor to conduct further analysis. Pending this additional analysis and a new decision, access to private lands by commercial and private users will not be changed.

Capacity

Issue: The Plan fails to determine a carrying capacity.

Response: Carrying capacity is defined in the National Wild and Scenic Rivers System Guidelines for Eligibility, Classification and Management of River Areas (Guidelines) as:

"The quantity of recreation use which an area can sustain without adverse impact on the outstandingly remarkable values and free-flowing character of the river area, the quality of recreation experience, and public health and safety" (47 Federal Register 39455, September 7, 1982).

To develop the recreational component of the Snake River's capacity, Forest staff contracted with the University of Idaho to complete a visitor use survey. The purpose of this survey was severalfold: to describe the people who use the Snake River for recreation, to describe how they use the river, and to identify their management preferences and perceptions of the river ("Hells Canyon Visitor Profile and Recreational Use Study," p. 2). This survey was initiated to provide a basis for revising the river recreation management section of the HCNRA CMP.

Survey results indicated a more than 44 percent increase in recreation visitation from 1979 through 1988. Forest staff determined that the increased use had affected the recreation experience. In an effort to update the existing direction for the Snake River, the survey information was used in a public process to determine standards and management actions related to river education, maintaining the recreation experience, and perpetuating the natural and cultural resources ("Limits of Acceptable Change Recreation Management Plan for Snake River," September, 1991). The results of this effort helped the Forest Service to define the proposed action for the Snake Wild and Scenic River Recreation Management planning process. The proposed action represents one management regime to protect and enhance the values of the Snake River. During the development of the FEIS, a number of other alternative management regimes were developed and analyzed. The development of the FEIS included an intensive public scoping process (FEIS, pp. I-17-18) and nearly 300 pages of response to public comments (FEIS Appendices, pp. K-1-286).

Based on the survey, Forest Service information, and public scoping, a carrying capacity is proposed for all users of the Snake River. In addition, launch reservations would be required for all users during the primary season in both the wild and scenic segments. However, an exception to this requirement is made for the Monday through Thursday time period in the scenic segment until monitoring indicates that "daily caps are being utilized and the daily cap has the potential of being exceeded more than 50% of the use season" (FEIS, p. II-43).

In analyzing the recreation experience, settings and opportunities, Forest staff used the Recreation Opportunity Spectrum (ROS) and, more specifically, the "ROS for River Management." The ROS provided an inventory tool (FEIS, pp. III-1-8), and was used as a framework for analyzing the consequences of components of alternatives on the desired ROS. Specifically, effects were analyzed considering: access, sense of remoteness, social encounters, visitor management, and facility development and site management. In addition, each alternative was analyzed for its ability to meet a great variety of visitor expectations and for its capability to reduce campsite competition (FEIS, pp. IV-9-10). The Forest Supervisor directed the planning team to use the ROS "as an aid in determining an adequate mix of recreation opportunities to ensure protection of the physical and social attributes of the river environment" (ROD, p. 8). Through this analysis, an unprecedented decision was made to create a non-motorized recreational experience in the wild segment of the Snake River during a portion of the primary use season.

Forest staff also considered the effects of the level of use proposed in Alternative G on each of the identified outstandingly remarkable values. The associated levels of use and included mitigating measures (e.g., active user education, party size limitations, ban on cutting or burning of vegetation, solid waste carryout requirement) were judged to protect the identified values and, in some cases, provided for enhancement beyond the existing situation.

Conclusion: I find that the Forest Supervisor addressed user capacity in the FEIS by using the "ROS for River Management" as a framework to achieve a desired recreation experience. He considered the timing and location of perceived crowding and other user conflicts on the river. In addition to proposing an upper bound on numbers of launches for all users, he also limited some aspects of boating, such as introducing a non-motorized window to further reduce conflicts and to maintain the desired recreational experience (ROD, p. 11).

The analysis supports the carrying capacity for both motorized and non-motorized, private and commercial users as determined by the Forest Supervisor. However, limitations of use beyond those currently in effect may not be implemented prior to completion of the permit-by-permit analysis for commercial uses and a new decision. The specifics of timing and duration of a non-motorized window will be determined by the Forest Supervisor's analysis and subsequent decision relative to commercial use. (Refer to Commercial Use discussion.)

Fairness

Issue: The Recreation Plan does not fairly allocate use to the affected user groups. It prevents private boaters from an equal opportunity for river access and it shows favoritism to jetboaters. Conversely, it discriminates against those who rely on powerboat use for access to the river.

Response: Allocation relates directly to how a limited resource is divided among potential users. The Forest Supervisor charged his planning team to develop a Recreation Plan that provides a "fair and equitable allocation of private and commercial use levels" (ROD, p. 12). There are two options to allocate use between user groups: a system that splits use on a percentage basis; or, one that makes permits available without consideration of whether the user is commercial or non-commercial. There are reasons for choosing either system. The choice needs to be based on the existing situation and desired future.

On the Snake River, commercial outfitter-guides have provided a valuable service in making the river available to users lacking equipment, skill, or physical ability. Outfitter-guide service is of importance on the Snake River to acquaint the public with this special place and to increase their appreciation and understanding of river resources (ROD, p. 12).

Many were concerned that the system was not fair when apportioned among user types; either it limited their use unnecessarily or it gave excessive use to a particular user group. Some of the concerns about fairness came from confusion about the definition of the term "launch." In reviewing these concerns, I find the decision is fair in allocating the use between float and motorized rivercraft.

Conclusion: I find that the Forest Supervisor considered the methods of allocation available to him and chose a system that provides for a broad level of access to the public. He considered national and localized use through his allocations for motorized and non-motorized rivercraft. The allocation system is fair.

Control of Use and Numbers of Rivercraft

Issue: Powerboats should be prohibited in the wild section of the Snake River. Conversely, the prohibition of powerboat use (i.e., the non-motorized window) violates the HCNRA Act.

Response: The issue that motorized use should be prohibited in the wild segment is addressed in the analysis of public comment on the Final Rule for the HCNRA-Federal Lands (Rule):

"Section 2(b) of the Wild and Scenic Rivers Act defines "wild" in the context of classifying segments of rivers designated under the Wild and Scenic Rivers Act as 'those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.' 16 U.S.C. Section 1272(b)(1). In the Guidelines for Eligibility, Classification, and Management of River Areas published jointly by the Department of the Interior and the Department of Agriculture, the criteria for classifying a river segment as "wild" was further detailed. 47 Federal Register 39454, 39457 (September 7, 1982)

Based on the above, "wild" as defined in the Wild and Scenic Rivers Act and further developed in the Guidelines relates principally to the quantum and type of development that exists on the shorelines and in the corridors through which a wild and scenic river traverses. It does not relate to the type of rivercraft used on the river itself.

Even assuming that the definition of "wild" in the Wild and Scenic Rivers Act could be construed to foreclose or discourage motorized use on segments so classified, Section 10 of the HCNRA Act included a clear expression of congressional intent that recognized motorized rivercraft use of the Snake River as valid. The Forest Service believes that this clear statement of congressional policy in the HCNRA Act overcomes any contrary interpretation of the Wild and Scenic Rivers Act and Guidelines which might be proffered as a means of categorically prohibiting motorized rivercraft use on the Snake River." (59 Federal Register 36872, July 19, 1994)

The Rule to implement Sections 10(b)-(e) of the HCNRA Act establishes the ability of the Forest Supervisor to restrict motorized use through the forest planning process. Specifically, the Rule provides a number of standards for the use of motorized and non-motorized rivercraft in the HCNRA, including:

"(b) The use of motorized rivercraft is prohibited except on the Snake River and that portion of the Salmon River in the HCNRA administered by the Forest Service where such activity may be permitted subject to restrictions on size, type of craft, numbers, noise limits, duration, seasons or other matters which may be deemed by the authorized officer necessary for the safe use and enjoyment of the rivers: Provided, that where wild and scenic rivers are involved, the authorized officer may impose such additional terms and conditions as may be necessary to protect and enhance the values for which the river was designated." (59 Federal Register 36883, July 19, 1994)

The Rule also requires that the authorized officer must reasonably accommodate both private and commercial uses of each type of rivercraft, ensure that carrying capacity is not exceeded, and seek to minimize conflicts between motorized and non-motorized rivercraft users and between both types of rivercraft users and other users of the river (59 Federal Register 36884, July 19, 1994).

The ROD provides for those users who desire some level of non-motorized opportunity in the wild segment of the Snake River by creating a non-motorized window. The Recreation Plan includes a non-motorized period of 3 days per week for a maximum of 8 weeks between Fourth of July and Labor Day holidays between Wild Sheep Rapid and Kirkwood Historic Ranch. The total 24 day period amounts to 22 percent of the primary season for 66 percent of the wild river. The timing of the non-motorized period is designed to overlap the period of historically low powerboat use (ROD, p. 11), and is intended to have the least possible adverse effect on powerboat users.

Conclusion: I find that the Forest Supervisor's decision is within his authority to restrict the size, type of craft, numbers, noise limits, duration, seasons or other matters that he deems necessary. Statutory intent is clear that powerboat use may be permitted subject to restrictions necessary to protect the Snake Wild and Scenic River.

I affirm the decision to provide a non-motorized window to achieve more primitive conditions in the wild river segment and to reduce user conflicts. However, the specifics of timing and duration of a non-motorized window will be considered as part of the analysis of operational limitations on commercial uses. Therefore, the non-motorized window may not be implemented until the commercial use analysis is completed and a subsequent decision, relative to commercial use, is made. (Refer to discussion on Commercial Use and Carrying Capacity.)

Issue: The levels of motorized use in the wild segment should be held to those that existed at the date of designation of the HCNRA in 1975.

Response: The concern that powerboat use levels should not be allowed to increase after the date of designation is also addressed in the analysis of public comment on the Final Rule for the HCNRA-Federal Lands:

"In enacting the Act, Congress authorized regulations for 'the control of the use and number of motorized and non-motorized rivercraft: Provided that the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area.' There is no indication in the Act that Congress intended to restrict use of rivercraft to the level that existed in 1975. Clearly, Congress could have included such a condition if it had been so inclined.

Absent clear congressional expressions in the Act stipulating that rivercraft use be locked into 1975 levels, the Forest Service has adopted the well-reasoned and balanced approach that the amount of rivercraft use will depend on what use can be sustained while meeting the management goals and objectives of the Act and the Wild and Scenic Rivers Act. Therefore, the Forest Service declines to modify the rule in the manner recommended by these reviewers." 59 Federal Register 36873, 36874 (July 19, 1994)

Conclusion: I find that the Forest Supervisor is not limited to those levels of rivercraft use that existed in 1975.

Issue: The plan does not have enforceable regulations for the use of jetboats to ensure the protection of natural values and the safety of recreationists.

Response: The Forest Supervisor's decision includes requirements that must be followed or the user may be cited under Forest Service authorities. These requirements are designed to reduce user conflict and protect river values. This decision establishes maximum use for all types of rivercraft on the Snake River. These use levels are intended to limit both the magnitude and frequency of peak use (ROD, p. 11). The decision further requires launch reservations for all users in the wild segment during the primary season and for all users in the scenic segment Friday through Sunday. It establishes a daily cap for all users in the scenic segment, Monday through Thursday, with an associated monitoring standard that will trigger launch reservations.

Further, the decision establishes a "no-wake" zone at administrative and developed recreation sites (FEIS, p. II-6). Boater registration numbers are to be displayed on motorized rivercraft (as per State and Federal requirements) to qualify for issuance of permits, similar to the requirement for identification of floatcraft tags to be displayed by each craft in a launch party (FEIS, p. II-7). Establishing speed limits as a way to reduce jetboat wake was not considered an effective measure given the many factors that effect jetboat wake (FEIS Appendices, p. K-181). Further, establishing speed limits for the river does not allow powerboat operators to use whatever speed is necessary to safely navigate their craft through rapids (FEIS Appendices, p. K-266).

Regarding safety, the Rule states: "The use of motorized and non-motorized rivercraft is subject to all federal and state boating registration and safety laws" (59 Federal Register 36883 (July 19, 1994)). Such laws include, but are not limited to, the Idaho Safe Boating Act and the Oregon Small Rivercraft Act. The Forest Supervisor has also decided on an active education program which will, in part, focus on safety and river etiquette (FEIS Appendices, p. K-266).

Conclusion: I affirm the establishment of a "no-wake" zone at administrative and developed recreation sites, requiring rivercraft registration numbers to be displayed, and implementing an education program. The analysis does not support the need for additional regulations. I find the document (FEIS, Chapter IV, Environmental Consequences) adequately addresses the protection of values.

Statutory Intent

Wild and Scenic Rivers Act (W&SR Act)

Issue: The decision is contrary to the intent of the HCNRA Act and the W&SR Act. Specifically, the agency is not giving primary emphasis to protecting the river's aesthetic, scenic, historic, archeological and scientific features as per Section 10(a) of the W&SR Act. These features are sacrificed to accommodate recreation use.

Response: Section 10(a) of the W&SR Act requires the agency to protect and enhance the values for which the river was added to the system, "without, insofar as is consistent therewith, limiting other uses which do not substantially interfere with public use and enjoyment of these values." Through this planning effort, the outstandingly remarkable values were defined using a regional evaluation process. The identified outstandingly remarkable values included scenery, recreation, geology, fisheries, cultural resources (historic and prehistoric), vegetation and botanical resources, and ecology. Further, the Forest Supervisor required his staff to consider the environmental consequences of recreational use levels on the identified outstandingly remarkable values. There is an analysis (FEIS, Chapter IV, Environmental Consequences) to show the direct, indirect, and cumulative effects on the outstandingly remarkable values.

The Forest Supervisor also considered how the management direction and mitigation measures common to all action alternatives and specifically established in Alternative G would minimize onshore degradation and protect and enhance the outstandingly remarkable values. He concluded that the development of a river education plan, implementation of solid human waste carryout program, reduced party sizes, campsite stay limits, prohibition of cutting and/or burning live or dead vegetation, and other measures "will help ensure the protection and enhancement of the river's outstandingly remarkable values..." (ROD, p. 19-20). The Forest Supervisor states strong support for the monitoring and evaluation plan to evaluate the effectiveness of implementation (RMP, Appendix D).

He also directed the planning team to use the ROS classes to ensure that future management direction remains focused toward the primitive and semi-primitive end of the spectrum with attributes that accommodate motorized use (ROD, p. 9). He discloses the fact that since designation the river setting has moved away from the primitive or semi-primitive settings (FEIS, p. III-2), primarily because of increased levels of use as well as different management strategies.

Conclusion: I find the decision meets statutory intent. The Forest Supervisor has not given undue emphasis to recreation, given that his objective is to manage the recreational experience while protecting and enhancing the outstandingly remarkable values. Further, the recreational experience is identified as an outstandingly remarkable value, and this decision serves to enhance this value through the establishment of use limits.

Issue: The Forest Service should manage the wild segment in keeping with its essentially primitive and wild condition. This means moving the condition of the resource towards that condition that existed at the date of designation of the HCNRA.

Response: The W&SR Act provides the intent to maintain wild rivers in an essentially primitive condition. The HCNRA Act allows for traditional and valid uses to continue and for the protection of historic and archeological sites. This direction applies to the entire HCNRA, including the river. The Forest Supervisor applies the intent of both statutes and has determined that there is a need to accept some inconsistencies within the wild river corridor to protect existing uses, such as ranching, historic structures, and facilitate administrative and scientific use. Two of the sites are for recreation purposes. Hells Canyon Creek is the portal into the wild corridor and has some facility development, including an access road. Sheep Creek has minimal facility development, primarily for resource protection. There are three administrative sites, with one also serving as a ranch headquarters. These sites range from largely undisturbed to having evidence of human development. There are two sites that are designated for historic protection and interpretation. Other sites, largely undisturbed, are for scientific monitoring (FEIS, pp. III-3-5).

This decision recognizes the above described administrative and developed recreation sites within the river corridor and manages them in accordance with Forest Plan direction for Management Area 16. These sites create patches within the general river corridor that are inconsistent with the desired setting. The Forest Supervisor's decision recognizes that there may be future opportunities to determine the best use of these sites while meeting legislative intent. Any future action would require that the Recreation Plan be amended through appropriate environmental analysis (ROD, p. 25). The record indicates that the majority of the corridor will be managed as semi-primitive.

The Forest Supervisor's decision includes specific elements to achieve a semi-primitive, motorized (outside the non-motorized period) and semi-primitive, non-motorized (during the non-motorized period) experience in the wild segment. Some specific measures that move the river setting toward the more primitive end of the ROS include:

- prohibiting the cutting or burning of live or dead vegetation,
- implementing a chain saw closure,
- establishing user etiquette education,
- providing a non-motorized window, pending additional analysis,
- limiting party size for non-commercial users,
- limiting maximum private floatcraft per party,
- establishing campsite stay limits,
- removing picnic tables except at two locations,
- removing some inconsistent structures,
- prohibiting personal motorized rivercraft,
- requiring self-issuing permits for backpackers and horsepackers.

Conclusion: I affirm that the Forest Supervisor can manage the identified administrative and developed recreation sites in accordance with Forest Plan direction for Management Area 16 in the river corridor. Further, I affirm the above described decisions that will move the river towards a more primitive condition.

Wilderness Act

Issue: The allowance of motorized rivercraft within the river corridor is incompatible with wilderness values and is not adequately addressed.

Response: The HCNRA Act is clear that the recreation area should be managed in a manner that is compatible (emphasis added) with the conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit. The Forest Service does not maintain buffer strips of undeveloped wildland to provide an informal extension of the wilderness, nor does it maintain internal buffer zones that degrade wilderness values. However, FSM policy [2320.3(5)] is clear that because wilderness does not exist in a vacuum, activities should be considered on both sides of wilderness boundaries during planning.

The Forest Supervisor considers rivercraft use in the Snake River corridor and its effect on bordering designated wilderness in Chapter IV and Appendix C of the FEIS. The record states:

"the sound of engines within the Wild and Scenic River Corridor predates the establishment of the HCRNA, the Snake Wild and Scenic River, and the Hells Canyon Wilderness. Wilderness regulations are for administering lands within wilderness boundaries and are not intended to create and/or enforce 'buffer zones' for activities occurring on adjacent lands. Wilderness management standards and values can not be applied to river corridor activities. The HCNRA Act recognized motorized rivercraft as a valid use of the Snake River within the Recreation Areas [Section 10 (d)]. The Act states further the HCNRA will be administered in a manner compatible with the conservation of wilderness values contributing to the public benefit" (FEIS, p. IV-140).

On page IV-141 (FEIS), the Forest Supervisor discloses that the recreation experience for Hells Canyon Wilderness users will be reduced by the sounds of motorized rivercraft and aircraft.

Further, the Forest Supervisor states in Appendix C:

"...Congress intended that a designated Wilderness provide only 'outstanding opportunity for solitude' not an exclusive guarantee of the highest quality solitude at all times. Since buffer strips are not provided, the opportunity to experience solitude, although possible, is lower in the area of Hells Canyon Wilderness adjacent to the Snake River corridor and becomes greater as one travels into the heart of the wilderness area (FEIS, Appendices, p. C-3)."

Conclusion: I find that the Forest Supervisor identifies, and sufficiently discloses the effects of motorized river use on wilderness values. The HCNRA Act [Section 10(d)] identifies motorized rivercraft as a valid use of the river corridor. Simultaneously with finding this use to be valid, Congress created the Hells Canyon Wilderness. Clearly, the intent of Congress was that, in this instance, motorized rivercraft use within the corridor is compatible with adjacent wilderness values. In addition, the Forest Supervisor's decision has the effect of limiting increases to motorized rivercraft use within the corridor, at the same time moving the river setting toward a more primitive condition, and, on the whole, increasing compatibility with wilderness.

Issue: The allowance of aircraft in the river corridor between and adjacent to wilderness impacts the wilderness resource and should not be allowed in a wild river corridor.

Response: There is no specific congressional guidance for the use of aircraft within the corridor. The Final Rule for the HCNRA-Federal Lands states at Section 292.44(b)(2):

"the use of motorized and mechanical equipment on designated Forest Service roads, trails, and airstrips is prohibited on wild and scenic river segments classified as "wild" except as provided for by the authorized officer upon a determination that such use is necessary for the administration of the river or to protect and enhance the values for which the river was designated."

Primitive landing strips were recognized as a necessary adjunct of administering an area as expansive as the HCNRA, and were identified as a potential, though seldom used, safety feature (59 Federal Register 36871, July 19, 1994). While use of the designated airstrips is allowed by the Rule, to what extent some or all of these airstrips should be closed is within the purview of the CMP, based on the criteria described above by the Rule.

In reviewing the administrative appeal record, it is not clear that private airstrip use in the wild corridor is necessary to protect and enhance the values for which the river was designated. The ROD (p. 13) leaves Big Bar airstrip open in the wild segment of the river. The decision rationale (ROD, p. 14) for opening Sluice Creek is that intermittent use continues to occur on this airstrip, and recognizes an opportunity for aviators to access the wild segment for hunting, fishing, and recreational purposes.

Conclusion: The record is not clear that the decision for aircraft use is compatible with the conservation of wilderness values, nor is it clear that such use is necessary for the administration of the river or to protect and enhance the values for which the river was designated. I am reversing the Forest Supervisor's decision relevant to aircraft landing strips in the wild river corridor. This means that the existing use of airstrips is unchanged, pending a new decision.

Protection of Threatened and Endangered Species

Issue: The Plan does not ensure protection and enhancement of habitat for threatened and endangered species.

Response: One of the significant issues utilized in the Snake Wild and Scenic River Recreation Management Plan development was the protection of threatened and endangered salmon. Specifically, this issue is identified as: "recreation use allocation should be consistent with the protection and enhancement of threatened and endangered salmon fisheries and habitat in the river corridor" (FEIS, p. I-13). A number of key indicators are identified to evaluate this concern. In addition, "minimizing onshore degradation" is identified as significant and related directly to visitor impacts from onshore recreation use on proposed, endangered, threatened, and sensitive plant species and habitat as well as cultural resources (FEIS, p. I-15).

These issues, and the consequences of the alternatives on the outstandingly remarkable values, are analyzed as to direct/indirect and cumulative effects in the FEIS. The Forest Supervisor used this analysis (including the boat wake study in Appendix E), the biological assessment, and the National Marine Fisheries Service biological opinion in concluding that "the allocation of floatboating and powerboating use levels are not expected to jeopardize the continued existence of sockeye salmon, spring/summer, or fall chinook salmon. The Recreation Plan user education program and the prescribed monitoring items will facilitate a decrease in potential effects on the sockeye and chinook populations." He further recognizes the key role that monitoring and evaluation will play in validating assumptions of the effects of recreation activities on the fisheries (ROD, pp. 17-19).

Forest staff completed a biological evaluation (BE) for wildlife species, including eagles. The BE documents that the corridor serves as a wintering area for the bald eagle. The U. S. Fish and Wildlife Service concurred with the Forest Service that the implementation of the plan may affect, but is not likely to adversely affect the continued existence of bald eagles wintering in the wild and scenic portion of the Snake River. In the monitoring plan, the interaction of recreation use will be assessed for its impacts on bald eagles.

Conclusion: I find that the Forest Supervisor has met the requirements of the Endangered Species Act regarding this proposal.

State Authority

Issue: The ROD and Recreation Plan do not address the conflict with State authority over the Snake. The Forest Service, in relying on the Property and Commerce Clauses of the Constitution, is overstepping its authorities in regulating established uses on this public highway and State property.

Response: The Wild and Scenic Rivers Act confers an affirmative responsibility on the part of the administering agency "to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values" (16 U.S.C. Section 1281). Further, respective of the provisions of Section 13 (U.S.C. Section 1284), the authorized officer "may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of the Act." The concern that the Forest Service has exceeded the scope of its authority to regulate rivercraft use on the Snake River to protect the recreation experience (and other outstandingly remarkable values) and to provide for safety and enjoyment of the river, is addressed in the Final Rule for the HCNRA-Federal Lands (59 Federal Rule 36871-36872, July 19, 1994). In analyzing the application of the Commerce and Property clauses to the development of standards for recreational use of rivercraft, it was concluded that the standards are authorized under either the Commerce or Property Clause.

Conclusion: I find that the Forest Supervisor is operating within the authorities afforded to the administering agency.

Monitoring

Issue: The monitoring component of the Plan is devoid of measurable criteria for standards from which to evaluate compliance with the intent of the Plan.

Response: I have reviewed the monitoring component of the Snake Wild and Scenic River Recreation Plan relating to your concern that it is devoid of measurable criteria for standards to evaluate compliance with the intent of the Plan. The specified "thresholds of variability" provide a standard from which each monitoring element will be evaluated. Standards and resulting management actions are addressed other than in the monitoring plan. Competition for campsites will be monitored and if additional mitigation does not solve the conflict, a campsite reservation system would be implemented for the wild and/or scenic river (RMP, p. 12). Campsite stay limits (ROD, p. 22) are the initial action designed to reduce campsite competition.

In responding to comments on campsite management (FEIS Appendices, pp. K-146-147), the Forest Supervisor identified the types of steps that could be taken, if monitoring indicated that the recreation experience was being compromised. In addition, he provided direction to monitor the impacts of other users (e.g., trail and aircraft) in the corridor by requiring self-issuing permits (ROD, p. 10).

Conclusion: I find the monitoring direction in the Recreation Plan is sufficient to develop a monitoring implementation schedule.

Seaplanes

Issue: The record fails to provide an adequate analysis of the need to prohibit floatplane landings on the river.

Response: The record does not provide sufficient analysis and disclosure to support the elimination of floatplane use.

Conclusion: I find the record does not provide sufficient analysis and disclosure to support the determination to prohibit floatplane use. Therefore, I am reversing the Forest Supervisor's decision relevant to the elimination of floatplane use. The Forest Supervisor may choose to complete additional analysis and make a new decision relevant to use of the river by floatplanes. However, prior to making this new decision, the Forest Supervisor may act on his own discretion to temporarily prohibit floatplane use on specific segments of the river to address safety or resource management issues as authorized by 36 CFR 261.50.

Navigation Markers

Issue: The record fails to provide an adequate analysis of the need to remove navigation markers on the river.

Response: The FEIS provides adequate discussion of the consequences of the removal of navigation markers. Removal of navigation markers upstream from Kirkwood, in cooperation with the Corps of Engineers, is designed to provide a degree of challenge and risk in keeping with a "wild" river (FEIS Appendices, p. K-263) and enhance the sense of remoteness (FEIS, p. IV-24). Further, the FEIS (p. IV-80) discloses that "removal of the navigation markers would be considered a negligible effect in regard to powerboat safety."

Conclusion: I find the record provides sufficient analysis and disclosure to support the determination to remove navigation markers. Therefore, I am affirming the Forest Supervisor's decision.

CONCLUSION

Because of the number of issues raised about the Snake Wild and Scenic River Recreation Management Plan to which I have responded, I am summarizing my final decisions by the following categories: affirm, affirm with direction, or reverse.

Affirm

Environmental Analysis Process - I find the Forest Supervisor correctly followed the environmental analysis procedure and do not find any lack of attention to correct process.

Public Need for Commercial Use - I affirm the Forest Supervisor's conclusion that continued outfitter-guide services are needed on the Snake River.

Fairness - The Forest Supervisor chose a fair allocation system.

Motorized Rivercraft Should be Limited to 1975 Levels - The Forest Supervisor is not limited to those levels of rivercraft use that existed in 1975.

Enforceable Regulations - I am affirming the establishment of a "no-wake" zone at administrative and developed recreation sites, requiring rivercraft registration numbers to be displayed, and implementing an education program. The analysis does not support the need for additional regulations. I find the document (FEIS, Chapter IV, Environmental Consequences) adequately addresses the protection of values.

Meet Intent of Wild and Scenic Rivers Act - I find the decision meets statutory intent. The Forest Supervisor has not given undue emphasis to recreation. I affirm that the Forest Supervisor can manage the identified administrative and developed recreation sites in accordance with Forest Plan direction for Management Area 16 in the river corridor. Further, I affirm the following decisions that will move the river towards a more primitive condition:

- prohibiting the cutting or burning of live or dead vegetation,
- implementing a chain saw closure,
- establishing a user etiquette education,
- providing a non-motorized window, pending additional analysis,
- limiting party size for non-commercial users,
- limiting maximum private floatcraft per party,
- establishing campsite stay limits,
- removing picnic tables except at two locations,
- removing some inconsistent structures,
- prohibiting personal motorized rivercraft.
- requiring self-issuing permits for backpackers and horsepackers,

Motorized Rivercraft and Compatibility with Adjacent Wilderness - I find that the Forest Supervisor identifies, and sufficiently discloses the effects of motorized river use on wilderness values.

Protection of Threatened or Endangered Species - The Forest Supervisor has met the requirements of the Endangered Species Act regarding this proposal.

State Authority - The Forest Supervisor is operating within the authorities afforded to the administering agency.

Monitoring - The monitoring direction in the Recreation Plan is sufficient to develop a monitoring implementation schedule.

Removing Navigation Markers - I find the record provides sufficient analysis and disclosure to support the determination to remove navigation markers.

Mitigation Measures and Management Direction Common to All Action

Alternatives - Mitigation measures common to all action alternatives II-8, II-9 of the FEIS are affirmed. In addition, management direction common to all management alternatives found at II-5-7 is affirmed, except:

- prohibit the launching of inflatable watercraft from commercial powerboats*,
- the use of kickers on floatcraft*,
- coordination with BLM on lower Salmon River and the strategy for Salmon River uses, and*
- changing allowable use on airstrips in the wild river corridor,
- as a result of the permit-by-permit analysis required for commercial use, an adjustment, up or down, of the maximum ceiling of the number of special use permits for commercial outfitters could result.

* These are operational issues related to outfitter-guide services which cannot be separated from the commercial use analysis.

Affirm With Direction

Commercial Use - I affirm setting the maximum total commercial capacity based on the average of the highest 2 out of 5 years (1988-1992) as modified by the 5 year average. Further, I direct the Forest Supervisor to examine actual use reported for 1988-1992 and amounts paid and verify or refine the numeric estimate of this cap without a new decision. My direction does not guarantee that any individual permittee will retain the level of use they had during the two highest years of the base period as modified by the 5 year average. Additionally, operational limitations may limit the Forest Supervisor's ability to allocate the entire capacity as derived from the base period. I am limiting his review of commercial uses to the 1988-1992 base period.

Carrying Capacity - I find that the Forest Supervisor addressed user capacity in the FEIS by using the "ROS for River Management" as a framework to achieve a desired recreation experience. He considered the timing and location of perceived crowding and other user conflicts on the river. In addition to proposing an upper bound on numbers of launches for all users, he also limited some aspects of boating, such as introducing a non-motorized window to further reduce conflicts and to maintain the desired recreational experience (ROD, p. 11).

The analysis supports the carrying capacity for both motorized and non-motorized, private and commercial users as determined by the Forest Supervisor. However, limitations of use beyond those currently in effect may not be implemented prior to completion of the permit-by-permit analysis for commercial uses and a new decision. The specifics of timing and duration of a non-motorized window will be determined by the Forest Supervisor's analysis and subsequent decision relative to commercial use. (Refer to Commercial Use discussion.)

Powerboat Use in Wild River - I find that the Forest Supervisor's decision is within his authority to restrict the size, type of craft, numbers, noise limits, duration, seasons or other matters that he deems necessary. Statutory intent is clear that powerboat use may be permitted subject to restrictions necessary to protect the Snake Wild and Scenic River.

I affirm the decision to provide a non-motorized window to achieve more primitive conditions in the wild river segment and to reduce user conflicts. However, the specifics of timing and duration of a non-motorized window will be considered as part of the analysis of operational limitations on commercial uses. Therefore, the non-motorized window may not be implemented until the commercial use analysis is completed and a subsequent decision, relative to commercial use, is made. (Refer to discussion on Commercial Use and Carrying Capacity.)

Reverse

Disclosure of Effects to Outfitters - I find that the ROD and FEIS do not disclose the consequences of how the decision affects the economic viability of outfitter-guides. The Forest Supervisor must further analyze the specific effects of allocation and operational limitations on individual permits and then make a new decision relative to commercial use.

Access to Private Land - In order to assure reasonable and adequate access to private land as required by the Alaska National Interest Lands Conservation Act (ANILCA), I am directing the Forest Supervisor to conduct further analysis. Pending this additional analysis and a new decision, access to private lands by commercial and private users will not be changed.

Aircraft Use and Compatibility with Adjacent Wilderness - The record is not clear that the decision for aircraft use is compatible with the conservation of wilderness values, nor is it clear that such use is necessary for the administration of the river or to protect and enhance the values for which the river was designated. I am reversing the Forest Supervisor's decision relevant to aircraft landing strips in the wild river corridor. This means that the existing use of airstrips is unchanged, pending a new decision.

Seaplanes - I find the record does not provide sufficient analysis and disclosure to support the determination to prohibit floatplane use. Therefore, I am reversing the Forest Supervisor's decision relevant to the elimination of floatplane use. The Forest Supervisor may choose to complete additional analysis and make a new decision relevant to use of the river by floatplanes. However, prior to making this new decision, the Forest Supervisor may act on his own discretion to temporarily prohibit floatplane use on specific segments of the river to address safety or resource management issues as authorized by 36 CFR 261.50.

Eliminating Drop Camps and Hours of Operation - There is no disclosure of the consequences of eliminating drop camps and limiting hours of operation. These are operational issues related to outfitter-guide services which cannot be separated from the commercial use analysis.

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 217.17(d) and 36 CFR 251.100(b)).

A stay of implementation under 36 CFR 217 and 251 is currently in effect. It shall remain in effect until the end of the 15-day period in which the Chief must decide whether or not to review this decision. However, I am delaying the implementation of those decisions that are affirmed until September 15, 1995.

Sincerely,

/s/ Richard A. Ferraro
RICHARD A. FERRARO
Reviewing Officer
Deputy Regional Forester

cc:
Intervenors - see enclosed list

Wallowa-Whitman NF - K.Wiedenmann, W.Fine
SWhitney:Appeals:Snake RMP - NWRA:95/07/18