

April 21, 2016

Senator John Barrasso  
Chairman  
Subcommittee on Public Lands, Forests and Mining  
U.S. Senate  
Washington, D.C. 20510

Senator Ron Wyden  
Ranking Member  
Subcommittee on Public Lands, Forests and Mining  
U.S. Senate  
Washington, D.C. 20510

**RE: Hearing Statement on S. 1777, a bill to amend the Wild and Scenic Rivers Act**

Dear Chairman Barrasso and Ranking Member Wyden:

On behalf of Wilderness Watch, a national wilderness conservation organization, and Friends of the Clearwater, a Moscow, Idaho-based organization, we are providing this testimony on S. 1777, a bill to amend the Wild and Scenic Rivers Act. Wilderness Watch and Friends of the Clearwater are opposed to this legislation. Please make this testimony part of the hearing record.

S. 1777 is a sordid example of special interest legislation to benefit a single individual at the public's expense that will harm one of our nation's premier Wildernesses and Wild Rivers.

A bit of historical background may help put this bill in perspective. The 1980 Central Idaho Wilderness Act designated the 2.4 million-acre Frank Church-River of No Return Wilderness, and a 79-mile stretch of the Salmon River as a Wild River under the Wild and Scenic Rivers Act. The U.S. Forest Service unlawfully permitted a commercial outfitter to build a resort lodge at Smith Gulch in 1988, eight years after the area was designated Wilderness and as a Wild River. Conservationists challenged this decision in federal district court. In 2000, the federal court ruled that the lodge/resort was illegal and must be removed. In 2004, just 12 months before the lodge and cabins were to be removed and the site rehabilitated and after having failed to pass stand-alone legislation, Senator Larry Craig added a rider to the unrelated Consolidated Appropriations Act amending the Wild and Scenic Rivers Act to allow the illegal lodge and cabins to remain.

Not content with the special privileges afforded by having a private lodge on public land on the Wild Salmon River, the owner of the lodge now demands even more concessions from the public. S. 1777 would allow construction of new facilities and related maintenance activities that are incompatible with wilderness designation and wild river status. It would grant to this individual lodge owner yet another exception to the Wild and Scenic Rivers Act. This special privilege granted to the owner of the unlawfully built resort would come at the expense of the wild character of the Salmon River and the American public, which owns these lands and deserves to have them protected for their wild river and wilderness values.

Specifically S. 1777 would mandate that the Forest Service allow, without any ability to regulate, the use of motorized equipment, gasoline-powered electrical generators and associated electrical transmission facilities, hydroelectric generators and associated electrical transmission facilities, and solar energy facilities and associated transmission lines and facilities. This is not an exhaustive list. It is an expansion of existing authorizations, couched in terms of maintenance and replacement of existing practices and facilities. This is a far cry from the “rustic” structures that were supposedly approved in the 2004 legislation, and only serves to further degrade the character and integrity of the *Wild* Salmon River.

Elsewhere in the Wilderness and Wild and Scenic River systems outfitters and guides ply their trade without the privileges S. 1777 would grant to this individual operator. The legislation reeks of special interest favoritism that benefits what appears to be a politically connected commercial operator at the expense of the American public.

Adding insult to injury, the owner of the River of No Return Lodge who would benefit from this special interest legislation appears to have compiled a lengthy track record of violations and non-compliance. As the U.S. Forest Service noted in a 2014 memo, “Between 2009 and 2012, for example, at least 5 different non-compliance/suspension notices were sent from the [U.S. Forest Service] to [the operator] based on lack of bill payment, proof of insurance, reporting requirements, and other permit violations. In addition, in 2011 [the operator] was investigated by the Idaho Outfitter Guide Licensing Board and Idaho Department of Fish and Game for reported infractions of licensing board and/or game and fish violations, both of which were in violation of his permit.” See Attachment 2. As part of this less-than-stellar track record, the U.S. Forest Service terminated the operator’s special use permit in 2011 because of non-compliance issues, though it was later re-instated. See Attachment 2.

The fabled “River of No Return” running through the heart of the largest contiguous designated Wilderness outside Alaska was tragically degraded in 2004 when Congress amended the Wild and Scenic Rivers Act to allow the unlawfully constructed Smith Gulch resort to remain within the river corridor (Attachment #1, the attached chronology, spells out this history in detail). S. 1777 only serves to make an unfortunate situation worse. We urge you to reject this special interest legislation that robs citizens of their natural heritage and tax dollars. Congress should not only reject S. 1777, it should repeal

the “rider” that was passed in 2004 and restore the wild integrity to this remarkable Wilderness and wild river corridor.

Please do not advance S. 1777.

Sincerely,

George Nickas  
Executive Director  
Wilderness Watch  
P.O. Box 9175  
Missoula, MT 59807

Gary Macfarlane  
Ecosystem Defense Director  
Friends of the Clearwater  
P.O. Box 9241  
Moscow, ID 83843

Attachment #1: Chronology of the *Wild and Scenic* Salmon River and the unlawfully constructed Smith Gulch outfitter resort

Attachment #2: U.S. Forest Service, Intermountain Region Informational Briefing Paper, June 5, 2014

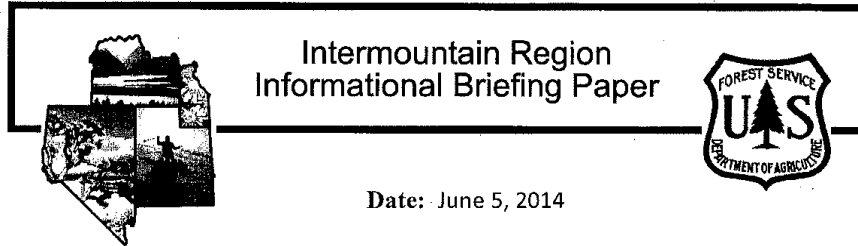
## **Attachment #1**

### **Chronology of the *Wild and Scenic* Salmon River and the unlawfully constructed Smith Gulch outfitter resort**

- 1931-36** The Forest Service administratively designates the lands surrounding the Salmon River as the Idaho Primitive Area and Salmon River Breaks Primitive Area. Primitive Area regulations provide that “there shall be no...occupancy under special use permits for hotels, stores, resorts, summer homes, organizational camps, hunting and fishing lodges or similar uses.”
- 1964** Wilderness Act passes. Among other provisions, the act gives statutory status to primitive area regulations.
- 1968** Wild and Scenic Rivers Act (WSRA) passes, creating a three-tiered classification system for qualifying rivers - wild, scenic, or recreational. Wild rivers receive the highest level of protection as “vestiges of primitive America,” and with “shorelines essentially primitive.” Salmon River designated as a study river.
- 1971** Regional Foresters Vern Hamre (Intermountain Region) and Neil Rahm (Northern Region) issue orders requiring that all permanent camps be removed from the Salmon River corridor to comply with Primitive Area regulations and the Wilderness Act. Five of the 8 camps are removed or burned.
- 1980** The Central Idaho Wilderness Act (CIWA) designates 2.4 million acres in central Idaho as the Frank Church-River of No Return Wilderness. It also designates the 79-mile stretch of the Salmon River within the Wilderness as a Wild River under the Wild and Scenic River's Act. CIWA requires that the river corridor be administered under the provisions of the WSRA.
- 1988** The Forest Service allows outfitter Norm Guth to construct a lodge and several cabins at Smith Gulch on the Wild Salmon River. By the time Salmon National Forest supervisor Richard Hauff signs the environmental assessment and notifies the public of the decision, construction is at least 75% complete.
- 1991** Wilderness Watch, Five Valleys Audubon, and William Worf file a lawsuit seeking review of the decision allowing the Guth Resort. The Forest Service admits that procedural errors were made and agrees to prepare an Environmental Impact Statement to “reexamine the need for the outfitter camp to exist at Smith Gulch.”
- 1992** Scope of the EIS is expanded to include the Arctic Creek and Stub Creek camps, both of which had developed into permanent lodge / cabin camps even though their permits allowed temporary outfitter camps only.

- 1995** Salmon National Forest supervisor George Matejko signs the EIS and Record of Decision. Fifteen-year permits are issued to the outfitters at Smith Gulch, Stub Creek and Arctic Creek.
- 1996** Wilderness Watch files an amended complaint with the Court challenging the presence of permanent structures at all three camps. The case was held for 4 years by the district judge without a ruling.
- 2000** Case is reassigned to Ninth Circuit Judge Sidney R. Thomas, sitting by designation, in July 2000.
- 2000** On September 19, 2000, Judge Thomas issues his ruling that the resorts violate the Wild and Scenic Rivers Act and must be removed. He remands the decision to the Forest Service to determine how to comply with the Court's order.
- 2003** Forest Service releases decision requiring that lodges and cabins be removed and the sites rehabilitated by December 31, 2005.
- 2004** Senator Larry Craig (R-ID) attaches a "rider" to Public Law 108-447, the "Consolidated Appropriations Act, 2005" that amended the Wild and Scenic Rivers Act by mandating the continued authorization of the permanent commercial facilities at Stub Creek, Arctic Bar, and Smith Gulch on the Wild and Scenic Salmon River.

## Attachment #2



**Topic:** River of No Return (Smith Gulch Cabin) Salmon-Challis National Forest (S-C NF)

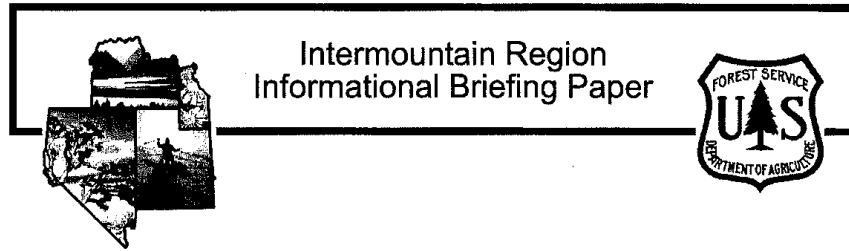
**Background:** In 2007, Kevin Yeates purchased the White Water West (formerly Smith Gulch Lodge) business and renamed it River of No Return Lodge (RONR). RONR is located on National Forest System lands and requires a special use authorization for use and occupancy; operation and maintenance of the Lodge and associated outfitter/guide services. Typically, lodge special use authorizations are issued for a 20-year period. Management aspects of RONR and two similar lodges on the Main Salmon River Corridor follow the Wild & Scenic River Act 16 U.S.C. §1274(a)(24)(D) which required authorization for the established use and occupancy as of June 6, 2003.

The Forest Service initially attempted to issue a temporary permit to Mr. Yeates for RONR with the goal of issuing a long-term permit. The S-C NF met with Mr. Yeates several times to discuss both in issuing a temporary and long-term permit. In July 2009 the S-C NF sent Mr. Yeates a temporary permit requesting signature for proper authorization for use and occupancy, but Mr. Yeates failed to sign or respond until September 2010. Signature was not provided and the temporary authorization was not issued until July 1, 2011. Repeated attempts to get a signature on the permit were unsuccessful until 2011 although RONR actively operated RONR since purchase.

There have been continued non-compliance issues with the RONR operation. Between 2009 and 2012, at least 5 different non-compliance/suspension notices have been sent from the SCNF to Yeates based on lack of bill payment, proof of insurance, reporting requirements and other permit violations. In addition, in 2011 Mr. Yeates was investigated by the Idaho Outfitter Guide Licensing Board and Idaho Department of Fish and Game for reported infractions of licensing board and/or game and fish violations, both of which are in violation of his permit. In July 2011, Holland & Hart LLP was retained by Mr. Yeates to assist with the RONR permit issues and operation.

A separate issue being addressed by S-C NF since 2011 is a RONR proposal requesting several facility and activity additions or improvements. Several proposal components were approved to include a water pump for fire suppression, however, several were denied such as use of motorized landscape equipment and conversion to electrical services. The S-C NF determined the denied requests were not in compliance with the Wilderness Act and the Wild & Scenic River Act and would require extensive NEPA analysis. The analysis would require Mr. Yeates pay Cost Recovery fees in order for the Forest Service to process.

Key Contact(s): Mel Bolling 801-625-5164 Kathleen Moore 801-625-5175



**Current Status(s):** S-C NF has been corresponding with RONR representative, William G. Meyers III, Holland & Hart, LLP, over the past few months regarding issuance of the long-term permit through 2031. The S-C NF anticipates having an executed permit for the lodge and outfitting services by mid-June 2014. The permit would be issued to authorize "operating and maintaining an existing lodge (hotel/motel) facility and associated structures as they existed as of June 6, 2003 with an established maximum capacity of 24 guests at any one time." A supplemental permit would authorize jet boating on the Wild and Scenic Main Salmon River and day use hunting outfitter & guide opportunities.

Key Contact(s): Mel Bolling 801-625-5164 Kathleen Moore 801-625-5175