



WILDERNESS WATCH

Keeping Wilderness Wild

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August 6, 2024

Allison Landro
Beaverhead-Deerlodge National Forest
420 Barrett Street
Dillon, MT 59725

RE: Beaverhead-Deerlodge Outfitter Guide CE

SENT VIA: <https://cara.fs2c.usda.gov/Public//CommentInput?Project=66448>

Dear Ms. Landro:

The following are comments from Wilderness Watch regarding the Forest-wide Outfitter and Guide Reissuance Categorical Exclusion (CE). Wilderness Watch is a national nonprofit wilderness conservation organization dedicated to the protection and proper stewardship of the National Wilderness Preservation System. Our comments focus on the Anaconda-Pintler and Lee Metcalf Wildernesses and the West Pioneers and Sapphire Wilderness Study Areas (WSAs). The WSAs are statutorily protected. We also refer you to our earlier comments on the EA and detailed comments submitted by Friends of the Bitterroot that address other areas of concern including wildlife, recommended wilderness, roadless areas, and other important issues.

While commercial outfitting may serve an important role in providing necessary services to the public who desire to visit the Wilderness and WSAs, it should be recognized, as the Wilderness Act does and the courts have, that it is necessary to limit commercial uses to the extent they are necessary and proper. The amount of commercial use should not be demand-driven, i.e. whatever the market will bear. The founders of the Wilderness idea, the author of the Act, and the Congress all recognized the need to keep Wilderness – as much as possible – a commercial-free zone. The scoping letter fails on this point because it does not even address Wilderness.

Background and Process

While we were encouraged by the July 8 scoping letter statements that you had heard the concerns of the public, the incongruity of the agency doing less analysis and public involvement on the existing permits than it proposed with the earlier Environmental Assessment (EA) process is revealing. The letter clearly states “I have determined there is a need to improve our administration and oversight of the outfitting and guiding program.” It also indicates that “concerns our commenters raised” were validated by the agency. If the Forest Service really believes what it tells the public, why categorically exclude the proposal for existing permits from

analysis in an EA or environmental impact statement (EIS)? This is especially pertinent because there is little information presented in the scoping package and this is the only opportunity the public will have to weigh in on the proposal.

Further, limiting the scope of the CE to existing permits does not do much to alleviate our concerns. Not only are there about 47 permits under consideration, a sizable number, but new permits issued after 2017 have never gone through any public involvement, analysis, or consultation with the US Fish and Wildlife Service. The same is true for expansion of existing permits since 2017.

In sum, doing a CE for reissuance of these permits is a step backward, not forward. We strongly encourage you to do what the scoping letter claims was done and take a hard look at the existing outfitting program by doing a thorough public involvement process under an adequate NEPA analysis, be it an EA or EIS before considering new permits. Both new permits and expansions of previously existing permits that were issued since 2017 should be suspended and only considered if a future analysis that considers new permits is done.

Wilderness (and WSAs)

Like the aborted EA, this scoping letter fails to map out the congressionally-designated Wilderness and WSAs on the Beaverhead-Deerlodge National Forest. The small-scale maps at the District scale are inadequate for this purpose. This makes it very difficult to address the statutory obligations the agency has in administering outfitting and guiding in Wilderness.

Looking at the maps and other appendices, we can only come to an approximate estimate of the allocated service days. We have no idea what the actual use has been. Here is what we estimate (italics reflect total days for areas both in and outside of the Wilderness and WSAs that can't be broken out):

Anaconda-Pintler Wilderness

Big M Outfitters (20 days)
Wilderness Ventures (265 days)
La Marche Creek Outfitters (*15 days*)

Lee Metcalf Wilderness

Adventure Outfitting (*429 days*)
Boomhower Family Limited Partnership (81 days)
Yellowstone Mountain Guides (25 days)
Treed Up Outfitters (*50 days*)
Wolfpack Outfitters (*75 days*)
Sun Ranch Partners (*141 days*)

Sapphire WSA (362 days)

Royal Tine Outfitting (*361 days*)

West Pioneer WSA

Stockton Outfitters LLC (100 days)

J&J Game Retrieval/Justin Gnerer (100 days)

Beartooth Plateau Outfitters (268 days)

Alpine Running guides (40 days)

Treed Up Outfitters (50 days)

Pioneer Outfitters (90 days)

Steel Creek Outfitters (130 days)

Again, the above figures are based on extrapolating from the inadequate map packet. In addition, there are no maps of spike camps, no indication of whether permittees are meeting objectives, no analysis of the condition of camps or other use areas, or no analysis of compliance by outfitters.

For example, the *Field Report of Wilderness Character Anaconda Pintler Wilderness*, which was not part of this project's package, does show impacts to campsites on pages 49 through 137. But, there is nothing in the scoping letter to indicate more recent data on the trend, up or down, on these campsites or even whether they are used by outfitters and guides. Page 42 of the *Field Report* is the only place where outfitters are mentioned, and that is associated with monitoring attributes, but the report does not include that parameter in the campsite inventory. Besides, that report is over ten years old.

Even with hours of cross-referencing various documents that were not available on the project page, it is not possible to determine what impacts there are in Wilderness or WSAs. The failings of the scoping letter regarding Wilderness, as noted above, are also problems for the WSAs. There are additional problems with the WSAs as well:

- The scoping letter is silent on whether the current condition would comply with Judge Molloy's ruling on the WSAs in the Forest. They were designated in 1977.
- The scoping letter and appendices do not reveal whether motorized and mechanized outfitted use occurs in the WSAs.

A problem facing both Wilderness and WSAs is that we understand there are outfitting permits that have been issued since 2017 or expanded since that time. These have not gone through any public review or analysis. One of them, Sun Ranch Partners (an expansion) is permitted in the Lee Metcalf Wilderness. Others, including Alpine Running, J & J Retrieval, Steel Creek Outfitters (expansion), and Stockton Outfitters (expansion) operate within the West Pioneer WSA.

We recommend the following:

- Outfitters be treated like other members of the public in that there be no reserved camp areas and low impact camping techniques are required to be followed. Ending assigned outfitters camps in Wilderness (or WSAs) may reduce impacts.
- Pack animal numbers be reduced in Wilderness (and WSAs) to 12 and a party of size of

12 people be the limit. This is the number for the Anaconda-Pintler Wilderness. If conditions warrant for protection of sensitive areas, those numbers should be reduced even more.

- In Wilderness (and throughout the Forest), bear spray be a requirement for all outfitters and their guests. Strong encouragement is not a requirement. Further, the design features are the bare minimum and should be already be part of permits. They should be strengthened.
- At a minimum, an EA be done for renewing existing permits. As noted above, new permits and expansions of previously existing permits issued since 2017 should be suspended and only considered if a future analysis is done.
- If monitoring isn't being done, the Forest Service needs to (re)commit to a program to monitor outfitter and guide operations in Wilderness and WSAs. This kind of information must be available in the public involvement process.

Needs Assessment

The scoping letter does not refer to the extant needs assessment. That said, the needs assessment, done in 2015, does not contain enough information to establish a specific need for Wilderness-outfitted recreation, either generally or specifically. It merely sets up a process to determine if there is a need (see the flow chart on page 95). This document needs to be updated and improved and included in a revised analysis of the existing permits.

The Forest Service Manual notes at 2323.13g:

Outfitter and Guide Operations. Address the need for and role of outfitters in the forest plan. The plan must address the type, number, and amount of recreation use that is to be allocated to outfitters. Ensure that outfitters provide their service to the public in a manner that is compatible with use by other wilderness visitors and that maintains the wilderness resource.

It certainly appears the Forest Plan is deficient. As noted previously, we don't know the exact amount authorized or actually taking place in Wilderness (or WSAs). This needs to be remedied.

The US Court of Appeals for the Ninth Circuit:

The finding of necessity required in the Wilderness Act is a specialized one. The Forest Service may authorize commercial services only “to the extent necessary.” (emphasis added in original). Thus, the Forest Service must show that the number of permits granted was no more than necessary to achieve the goals of the Act....At best, when the Forest Service simply continued preexisting permit levels, it failed to balance the impact that that level of commercial activity was having on the wilderness character of the land.

At worst, the Forest Service elevated recreational activity over the long-term preservation of the wilderness character of the land. *High Sierra Hikers v. Blackwell*, 390 F.3d 630.

The Needs Assessment, though better than the scoping letter, does little to shed light on wilderness outfitting. A decision-maker could not determine whether the requirements of the manual and a court case are met by reading the Needs Assessment and the scoping letter.

Please keep us updated on this proposal. We again request a new EA or EIS be issued that provides the necessary information for determining requirements for outfitting and guiding in Wilderness and WSAs.

Sincerely,

A handwritten signature in dark ink that reads "Kevin Proescholdt". The signature is written in a cursive style with a large, prominent "K" and "P".

Kevin Proescholdt
Conservation Director