



United States
Department of
Agriculture

Forest
Service

Southwestern
Region

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File Code: 1570-1/2340

Date: August 06, 1999

Martin Wolf
GANESH 108, dba Earth Wisdom Tours
293 North Hwy 89A
Sedona, AZ 86336

Re: Appeal #99-03-00-0045-A251, Outfitter Guide Special Use Permit, Sedona Ranger District, Coconino National Forest

Dear Mr. Wolf:

This is my decision at the second level on the appeal filed by you, concerning District Ranger Ken Anderson's decision to issue you an annual permit for outfitting and guiding on the Sedona Ranger District. This appeal is conducted pursuant to 36 CFR §251.87(c)(2). As a second level appeal, my review is limited to the existing Administrative Record (AR) which was submitted by the Forest Supervisor on June 3, 1999.

The appeal dated November 4, 1998, references the issuance of an annual special use permit on September 25, 1998, and addresses three aspects of that decision:

- (1) the permit fails to add or substitute specific trails as requested
- (2) the permit fails to increase service days
- (3) the permit is not a 5 year priority use permit

The District Ranger has indicated that he is currently working on a cumulative effects analysis. He wants to complete this process before making decisions on changes to existing permits. These decisions include; modifications of service days, assignments of priority use, and substitution of trails.

ISSUE 1 - The Permit Fails To Substitute Trails As Requested

Response: Forest Plan Amendment 12 makes it necessary to review and adjust existing commercial tour permits to reduce impacts on the following; land and natural resources, visitor experiences, and residents of the community (AR 196, page 17). In the Responsive Statement (page 8, item 11) the District Ranger states that the District is currently working on the cumulative effects analysis for use in the reallocation process. The District Ranger's decision to complete this process, as the basis for making changes to existing permits, is not arbitrary. It is appropriate and in keeping with Amendment 12 to consider cumulative environmental effects.



ISSUE 2 - The Permit Fails To Increase Service Days

Response: Forest Plan Amendment 12 has determined that existing service day allocations must be reviewed. It is the responsibility of the authorized officer to determine whether changes in your service days are environmentally acceptable. The District Ranger has determined that the best time to make this assessment is after the cumulative effects analysis has been completed.

ISSUE 3 - A Priority Use Permit Was Not Granted

Response: Forest Service Handbook (FSH) 2709.11, section 41.53h, provides that assignment of priority use shall be at the discretion of the authorized officer and shall be based on the capacity of the area as established in the Forest Plan. The District Ranger is still in the process of completing the cumulative effects analysis to establish capacity and reallocate existing use. The holder of an annual permit has no right to a priority permit.

ALLEGATIONS OF UNFAIR PRACTICES

In addition to the three appeal points, you have made several allegations regarding unfair treatment in comparison to other outfitters and guides on the Sedona Ranger District. By letter of November 5, 1993, Sedona District Ranger Bob Gillies established a policy for converting from annual permits to priority permits (AR 17A, Appendix E). The AR does not show that you appealed Mr. Gillies' process for issuing priority use permits for outfitting and guiding.

There is a 1995 list (AR 17A, Appendix D) of outfitter guides with notes indicating which ones have priority use permits. In a letter dated February 26, 1999 (AR 17) there is a list of the current priority permits and the dates they were originally issued as priority permits. While some of the company names have changed through sales, the AR does not show that any company with less tenure than Earth Wisdom Tours received a priority use permit.

The June 1998, Forest Plan Amendment 12 addresses the need to review and reallocate commercial touring use and offer new business opportunities competitively (AR 196). The AR shows that you did not appeal that decision. While the process for issuing priority permits established by District Ranger Gillies in 1993, was discontinued in 1995, and replaced with Amendment 12 in June of 1998, the district has consistently applied the process.

Agency direction at FSH 2709.11, section 41.53h, item 3b, provides that authorized use should be reduced if the holder has utilized less than 70 percent of the assigned amount in each of three consecutive years. In the responsive statement (AR 16, page 17) the District Ranger indicates that he intends to address non-use in the reallocation process. You correctly allege that the District has not adhered to agency policy with respect to reducing non-use, however, I see no evidence of differential treatment among the various permit holders. I am directing the District Ranger to bring all commercial touring permits in alignment with this policy through the reallocation process.

Conclusion: The District Ranger's decisions: 1) not to authorize specific trails; 2) not to modify service days; and 3) not to grant you a priority permit, are appropriate given the need to analyze the impacts of currently approved uses prior to authorizing or re-authorizing additional uses. With respect to your concerns of unfair practices, I find that there was no unfair conduct on the part of the District Ranger.

It is my decision to uphold the District Ranger's decision to issue an annual special use permit on September 25, 1998. This is the final administrative decision for the Department of Agriculture.

Sincerely,

/s/ James T. Gladen
JAMES T. GLADEN
Appeal Reviewing Officer
Deputy Regional Forester

cc: Coconino NF
Sedona RD
Recreation R3
Appeals & Litigation R3