



File Code: 1570

Date: May 12, 1999

ATTN: MR WOLF  
G.A.N.E.S.H 108  
dba EARTH WISDOM TOURS  
293 NORTH HWY 89A  
SEDONA AZ 86336

**CERTIFIED - RRR**  
P 322 573 754

REC'D USDA  
DEPUTY REGIONAL FORESTER RESOURCES

Re: Appeal No. 99-01-1106-A251

JUN 28 1999

Dear Mr. Wolf:

This is my decision on the appeal filed by you on behalf of G.A.N.E.S.H. 108 dba Earth Wisdom Tours. For the purposes of this decision, further company references will be referred to as "EWT," except in direct quotes from the Record. On November 4, 1998, you appealed the Sedona District Ranger's decision of September 25, 1998 authorizing EWT's annual special use permit: you specifically appealed the Ranger's decision to deny certain requests for modifications to that permit.

Below I describe the decision being appealed and the scope of this review. This review addresses only those appeal points related to the decision being appealed. Since the appeal was filed in November 1998, this review was conducted under the appeal regulations at 36 CFR 251 Subpart C (1989).

### Background

The Sedona District Ranger approved EWT's annual Operating Plan and special use permit September 25, 1998.

The Appeal was filed by Appellant Mr. Martin Wolf through his attorney Mr. Michael Mongini on November 4, 1998.

The Ranger filed his preliminary Responsive Statement on Dec 4, 1998.

On January 7, 1999, the Forest Supervisor noted errors in the record index, asked for additional information and extended the time for the responsive statement.

On January 21, 1999, Ranger Anderson met with attorneys Mongini and Nelson in an attempt to resolve the appeal.

On Feb. 1, 1999 The Ranger had a second meeting with the Appellant's attorneys to discuss the appeal.



On Feb. 26, 1999, Ranger Anderson submitted his Responsive Statement, the information requested by the Forest Supervisor, and added a written description of the negotiations with Appellant's attorneys with the conclusion that the negotiations were unsuccessful.

On March 5, 1999, an oral hearing was held attended by Appellant Martin Wolf, attorneys Michael Mongini and Nancy Nelson, Forest Supervisor Jim Golden; Supervisor's Office staff Sharon Churchill, Art Matthias, and Rodger Zanotto; Sedona District Ranger Ken Anderson; and Sedona staff Debbie Wigle.

On March 5, 1999, Appellant submitted his reply to the Responsive Statement.

On March 22, 1999 the Appeal Record was closed.

On April 16, 1999, the Forest Supervisor extended the appeal review period and identified May 12, 1999 as the decision date.

### **Decision Being Appealed**

The decision being appealed is a special use permit issued on September 25, 1999 by Sedona District Ranger Ken Anderson to G.A.N.E.S.H. 108 dba Earth Wisdom Tours (EWT), owned by Mr. Martin Wolf. The appeal is based on what is not included in the permit rather than the content of the permit. Therefore it is necessary to clarify what requests were made leading up to the issuance of the permit.

The Record shows:

1. On July 3, 1998, EWT requested (Appeal Rec. 3, AR198):
  - a. the use of 2 new trails (Secret Canyon and Devil's Bridge) in lieu of two (2) existing permitted trails (Little Horse and Courthouse) that EWT considered to be adversely impacted by construction of the Bell Rock Pathway
  - b. a change of all weekly use caps to monthly caps
  - c. approval to make stops along FR 9549 road (currently permitted only as a travelway to private land)
  - d. approval to provide and service trash receptacles
2. On August 24, 1998, Ranger Anderson responded as follows (Appeal Rec. 3, AR202):
  - a. offered three (3) alternative trails (Red Rock Loop, Huckaby, and Long Canyon) for Little Horse and Courthouse Trails;
  - b. denied changing weekly caps to monthly caps, with his rationale;
  - c. denied the request to stop along FR 9549 road because it was not an approved

tour route;

- d. explained why the offered trash service wasn't appropriate for the area.
3. On August 26, 1998, EWT accepted Long Canyon Trail as an alternative for Little Horse and Courthouse trails but also requested Loy Canyon, Secret Canyon and Brins Mesa Trails (Appeal Rec. 3, AR203).
4. On September 4, 1998, Ranger Anderson issued a permit amendment deleting the Little Horse Trail and adding an equal amount of use for the Long Canyon Trail (from FR152D to the wilderness boundary) (Appeal Rec. 3, AR205).
5. On September 9, 1998, EWT requested (Appeal Rec. 3, AR206)
  - a. a priority use permit
  - b. a transfer of "closed off" user days from Little Horse and Courthouse trails to FR9587
6. On September 16, 1998, EWT's attorney submitted a request for reconsideration of the request to substitute Devil's Bridge, Secret Canyon, Loy Canyon, and Brins Mesa trails for Courthouse and Little Horse Trails, asserts arbitrary and unequal treatment of EWT, and suggests the likelihood of an appeal ( Appeal Rec. 3, AR207).
7. On September 25, 1998, Ranger Anderson approved a permit and operating plan signed by EWT (Appeal Rec. 3, AR210).
8. Marty Wolf reiterating that the Ranger would not trade trail use for road use (referencing EWT's request to trade Little Horse Trail for FR9587), offering again Huckaby Trail and Red Rock Loop Trail as alternatives, and offering new alternatives of Deadman Pass Trail and Brins Mesa Trail from the Jordan parking lot to the wilderness boundary (Appeal Rec. 3, AR213).
9. On October 23, 1998, District Ranger Anderson wrote a response to EWT's attorney's letter of September 16, explaining his rationale and questioning why alternatives offered by the Forest Service do not work (Appeal Rec. 3, AR 214).
10. On November 4, 1998, EWT submitted their appeal.

**Decision Elements** - During the above sequence of communication five (5) identifiable requests were made by EWT that were not approved in the special use permit issued on September 25, 1998. Four of these requests were specifically discussed in the appeal document. These four (4) requests, listed below, constitute the decision elements that are being appealed.

- A. Approval of a priority use permit.
- B. Permission to make stops along FR 9549.

C. A transfer of the Little Horse and Courthouse Trails user days to FR 9587.

D. Permission to use Secret Canyon, Devil's Bridge and Brins Mesa trails via access over the Vultee Arch Road (FR152), in lieu of Little Horse and Courthouse trails.

The fifth request, a change from weekly caps to monthly caps, was not requested as a remedy in the Appeal, and will not be addressed in this decision.

### **Scope of this Review**

The Appeal and the Reply to the Responsive Statement make assertions involving a number of permits in numerous locations over the last decade. Upon close review it is apparent that many of these assertions are related to past decisions that were not appealed, or are otherwise unrelated to the decision made that is now being appealed. This review will evaluate only the four (4) decision elements that are related to the decision described above.

With one exception, issues related to each decision element will be addressed in a discussion of that decision element. The exception is the issue concerning business viability, and since it is woven into all of the decision elements it will be treated separately (see E).

### **Decision Elements and Related Issues**

#### **A. Priority Use**

**Contention 1.A:** Appellant contends that the impending allocation process required by Amendment of the Forest Plan is not justification for refusing to issue WET a priority use permit, and is in fact unfair because other companies have been issued priority use permits.

**Response 2.A:** Sedona Ranger District began an effort to review authorization holders for issuance of priority use permits in 1993. In a letter dated Nov. 5, 1993, (Appeal Re. 3, Area Ranger Bob Gillies described the process to be used, which was basically to follow the order in which permits were issued (longest tenure first). The first five authorization holders on the list received priority use permits, the last priority permit being issued in 1995 (page 2, Feb. 26, 1999, memo submitting the additional information requested by the Forest Supervisor, Appeal Rec. 17). EWT was the next authorization holder to be considered for a priority use permit had the process been continued (Appeal Rec. 17A, APP D). No authorization holders below EWT on the tenure list received priority use permits (comparison of Feb. 26 memo with Appeal Rec. 17A, APP D).

Cumulative effects of the total outfitter-guide program began to emerge as a concern in 1995. In a 1995 letter (Appeal Rec. 3, AR115) Ranger Anderson talked about considering the "big picture" and "cumulative results". A capacity assessment was conducted later (Appeal Rec. 3, AR 220), and Ranger Anderson states his expectation that the reallocation process will help address the cumulative effects issue (Appeal Rec. 3, AR214). Ranger Anderson correctly states in his responsive statement that he has discretion in issuing priority use permits (Appeal Rec. 16; Forest Service Handbook (FSH) 2709.11.) His action is consistent with information in the 1997

USDA Forest Service Outfitter-Guide Administration Guidebook (Appeal Rec. 23) where it states "Some National Forests and Ranger Districts have placed moratoriums on increased outfitted opportunities pending completion of land classification, capacity studies, or allocation analysis". The cessation of issuing priority use permits in 1995 is also consistent with documented concerns about cumulative effects in the same year. Therefore I conclude that the Ranger's actions are reasonable and consistent.

Contention 1B: Appellant contends that waiting for the reallocation process to issue a priority use permit is unfair because it will limit the appellant to existing trails and capacity limits.

Response 1B: Neither Amendment #12 nor the Responsive Statement describe how the reallocation process will be conducted. In his Responsive Statement Ranger Anderson indicates that non-use will be a factor considered in the reallocation process (Appeal Rec. 16, pg. 9). Amendment #12 indicates that any additional outfitter-guide opportunities will be handled through a competitive process. The only potential for unfairness would be if those who have obtained priority use permits are evaluated differently from those who have not, merely because the process was discontinued.

Contention 1C: Appellant contends that his "seniority" as a special use permit holder and his compliance with all of the rules and regulation qualify him for a priority use permit.

Response 1C: As shown above, only authorization holders with a longer tenure than EWT have been issued priority use permits. Forest Service Handbook (FSH) 2709.11 states that authorization holders may be granted priority use permits following 2 years of satisfactory performance. The record also shows that EWT has significant non-compliance in its history. Non-compliance issues are in the record for 1991 (Appeal Rec. 3, AR44 & 55), for 1996 (Appeal Rec. 3, AR143, 146, 129-131), and for 1997 (Appeal Rec. 3, AR153). Therefore, I conclude that the "seniority" and "compliance" factors have received appropriate consideration by Ranger Anderson in his decision not to continue on with issuing priority use permits.

### **B. Permission to Make Stops Along FR9549**

Contention 1B: Appellants contention on this decision element is not clear. FR 9549 is not specifically discussed in the appeal but it is part of the remedy asked for, where "Appellant requests that he be allotted 'high use' on Forest Road 9549". I assume this is related to the Appellant's contention that "the District Ranger's practice has been to grant all other permittees a 'high use' allotment on at least one trail or road, and there has been no reason proffered for the failure to extend this practice to the Appellant" (Appeal Rec.1, pg. 7).

Response 1B: The Ranger, in his responsive statement, states that "EWT is not the only permit holder without a high use allotment" (Appeal Rec. 16, pg.13). FR 9549 was first authorized for access to private land on September 30, 1996 (Appeal Rec. 3, AR141). In both the operating plan and previous communication it was clear that this road would only be used to access the private land, and that stops along the way were not permitted (Appeal Rec. 3, AR128 & 141). As early as October 10, 1996, EWT was notified that they were observed violating these terms of their permit (Appeal Rec. 3, AR143). In his letter of August 24, 1998, Ranger Anderson describes the rationale for not approving EWT's latest request for stops along this road, which

actually included short side trips. At various other places in his Responsive Statement Ranger Anderson documents the need to go through the re-allocation process before increasing permitted use. Therefore, I conclude that the Ranger's actions are reasonable and consistent, and are adequately explained.

### C. A Transfer of Little Horse and Courthouse Trails User Days to FR 9587

Contention 1C: EWT contends that its restrictions on the use of FR788 and FR9587 are much greater than restrictions placed on Sedona Adventures and Sedona Photo Tours for these same roads.

Response 1C: FR788 is not related to the decision being appealed so it will not be addressed here. FR 9587 was approved for Sedona Adventures for camping in 1989 (Appeal Rec. 17A, APP V). FR 9587 was approved for EWT for tours in 1993 (Appeal Rec. 3, AR90) with use limits established at 1 vehicle/trip, 2 trips/day, 7 trips/week with 9 people/vehicle. These limits are still in effect on the current permit (Appeal Rec. 3, AR 209). Sedona Adventures was approved for day use hiking in 1995 (Appeal Rec. 17A, APP T), with a limit of 4 groups per day and a maximum of 15 people per group. Sedona Photo Tours has no permit on FR 9587.

The addition of a hiking permit to Sedona Adventures on FR9587 in 1995 is not inconsistent given that hiking is a different niche and that there were no documented concerns about over use on this road. However the relative high amount of use permitted as compared to EWT's use is not explained. It appears that the amount of use was simply established at the same level as other hiking routes on the permit. The maximum vehicles that EWT would be permitted per day is 2, per week is 7, per year is 364. The maximum vehicles that Sedona Adventures would be permitted (assuming 2 vehicles per group) per day is 8, per week is 56, per year is 2,912. It is possible that the actual use difference between the two permits is much different, given the general pattern of high use on touring permits and low use on hiking permits.

EWT asks for a remedy of transferring its allotted hiking use on the Little Horse and Courthouse trails to the FR 9587 vehicle touring allocation. In a hand written note dated 10/16/98 Debbie Wigle documented her discussion with Marty Wolf telling him that the District would only consider trading trails for trails, or roads for roads (Appeal Rec. 3, AR 213). This is consistent with Ranger Anderson's strong focus on "niche" being a consideration on outfitter-guide proposals. The record shows a spectrum of recreation uses has been a consideration with outfitter-guide management since the 1980's (Appeal Rec. 16, pg.3). It was documented as a consideration in the 1991 screening criteria by referencing type of use (Appeal Rec. 3, AR 54). Marty Wolf recognized that outfitter-guides occupy niches in his letter dated December 5, 1989 (Appeal Record 3, AR 13, pg. 2). He identified his niche (then dba Sedona Professional Tour Guides) as specialty education experience (Appeal Rec. 3, AR 13, pg. 3).

Therefore, I conclude that the Ranger's rationale for not transferring trail use to FR9587 is sound, however, the rationale for the discrepancy between amount of use on EWT's and Sedona Adventures permits is not clear. It seems likely that the potential impact of the vehicles could be the same regardless of their purpose.

#### **D. New Use Allocations on Secret, Devils Bridge and Brins Mesa trails**

**Contention 1D:** Appellant contends that Little Horse and Courthouse Trails were adversely effected by Bell Rock Pathway construction, and that the refusal to transfer this use to Secret Canyon Trail or Brins Mesa Trail (with access from the Vultee Arch Road) resulted in 10 months loss of business.

**Response 1D:** Ranger Anderson states that he wasn't aware of EWT's concerns until a meeting with EWT in June, 1998 (Appeal Rec. 3, pg.7). EWT formally requested transferring the use from these two trails to Secret Canyon and Devil's Bridge Trails (Appeal Rec. 3, AR 198). In a letter dated Aug. 24 the Ranger offered three alternative trails (Appeal Rec. 3, AR202). On September 4 EWT accepted the transfer of use from Courthouse Trail to the Long Canyon Trail (Appeal Rec. 3, AR 205). Discussions continued on the remaining use and the Ranger offered two new alternatives on October 16 (Appeal Rec. 3, AR 213) including Brins Mesa Trail with Jordan Road access. I conclude that the Ranger not only responded in a timely manner to EWT's requests but he also responded with reasonable alternatives that EWT chose not to accept. (EWT did in fact accept the Long Canyon alternative (Appeal Rec. 3, AR 203 & 205), which it apparently now appeals).

**Contention 2D:** Appellant contends that he has been treated differently from other outfitter-guides because he has been denied access to Vultee Arch road over an 8 year period while other permittees have been allowed increased access over the same period, specifically Sedona Red Rock Jeep Tours, Pink Jeeps, Sedona Adventures, and Sedona Photo Tours.

**Response 2D:** Red Rock Jeep Tours were first authorized to use Vultee Arch Road in 1984 (Appeal Rec. 17A, APP I), with no use limits. Use limits were established in 1991 (Appeal Rec. 17A, APP M) and a priority use permit was issued 1994 (Appeal Rec. 17A, APP CC) with adjustments to the limits. Use limits have remained constant since 1994. Pink Jeeps first received approval to use Vultee Arch road in 1986 (Appeal Rec. 17A, APP Y), with no limits. The records aren't available showing when limits were first established, but likely around 1991. A priority use permit was approved in 1994 establishing limits that are in effect today (Appeal Rec. 17A, APP Z). Sedona Adventures was first approved for use of Vultee Arch Road in 1988 (Appeal Rec. 17A, APP P) for touring, hiking and camping. Use limits were first established in 1991 (Appeal Rec. 17A, APP R). EWT requested approval for use of the Devil's Bridge Trail in 1989 and was denied (Appeal Rec. 3, AR 9). Sedona Photo Tours were first permitted use of the Vultee Arch Road in 1990 (the only permit issued after EWT applied for a permit) but Devil's Bridge trailhead was specifically excluded from the operating plan due to high use (Appeal Rec. 17A, APP G&H). EWT requested approval for use of Devil's Bridge Trail a second time in 1993 and was denied because "the area receives too much use and the service is currently being provided by other companies" (Appeal Rec. 3, AR 93).

Hiking in the Vultee Arch area was approved for Sedona Adventures in 1986. EWT was denied approval for hiking in 1990. This is consistent with the first documented screening criteria in 1991 (Appeal Rec. 3, AR 54) which states that only one O/G of a type will be permitted on system trails. The only permit approved after denial of EWT's request was issued to Sedona Photo Tours in 1990 for the instructional photography niche. This permit specifically excludes the Devil's Bridge trailhead requested by EWT. Therefore, I conclude that denial of EWT's request for use of rails along the Vultee Arch Road is historically and currently consistent.

**Contention 3D:** Appellant contends that since his approved operating plan indicates that he is expected to educate clients on wilderness values and ethics, he should be permitted to lead wilderness hikes.

**Response 3D:** EWT has an existing permit for a wilderness trail (Fay Canyon) on which his actual use is less than 25% (Appeal Rec. 16, pg. 14). Documented screening criteria since 1991 as well as Forest Plan Amendment #12 require permitted use in wilderness to be wilderness dependent. It is an established practice in the Forest Service to conduct wilderness education activities in non-wilderness locations, such as schools or trailheads. Therefore I conclude that this contention has no merit.

**Contention 4D:** Appellant contends that if Sedona Adventures can be permitted to use Secret Canyon Trail, then EWT should be permitted to use the trail.

**Response 4D:** The record shows that the screening criteria of "only one O/G of a type will be permitted on system trails" has been consistently applied since the early 1990's. Amendment #12 further indicates that hiking is not one of the areas needing new O/G opportunities. Therefore, I conclude that this contention has no merit.

**Contention 5D:** Appellant contends that because there is a considerable amount of non-use of the use allocation on the trails he is applying for, he should be allowed use of the trails.

**Response 5D:** Ranger Anderson agrees that non-use is a concern and states that it will be addressed in the reallocation process. He goes on to say that it does not make sense to double allocate for this use when he anticipates reducing and/or reallocating existing use. Further, since EWT uses only 35% of their allocation on Little Horse and Courthouse (Appeal Rec. 16, pg. 8), it does not make sense to transfer use to another underused trail. Apparently the demand is not there. Therefore I concur with the Ranger's rationale.

**Contention 6D:** The Appellant describes his request for access to Vultee Arch Road as consisting of "1 to 3 visits per week" and contends that that level of access "is within the stated Recreation Opportunity Spectrum (ROS) for this area and would not appreciably add to the use of this area" (Notice of Appeal, Appeal Rec.1, pg. 7).

**Response 6D:** Appellant's first request for any of these three trails came in his initial Operating Plan, signed and dated 10/23/89. Mr. Wolf requested use of Devil's Bridge Trail, and access was implied via Vultee Arch Road: the request was denied (Appeal Rec. 3, AR 9). Mr. Wolf applied for use on Devil's Bridge Trail a second time and use was denied 10/15/93; the reason cited for the denial was "The area receives too much use already and the service is currently being provided by several other companies" (Appeal Rec. 3, AR93).

According to the record, the Appellant made no additional requests for use of these three trails until 7/3/98, when Mr. Wolf requested a transfer of use from Little Horse and Courthouse trails to Secret Canyon and Devil's Bridge trails. (Although not stated, the only access to those trails is via Vultee Arch Road (FR 152)(Appeal Rec. 3, AR 198). The District Ranger responded to those requests by letter 8/24/98, stating that the impacts from use of Devil's Bridge and Secret Canyon Trails would be the same impacts that Mr. Wolf wanted to avoid at Little Horse and Courthouse trails:"...increased encounters and therefore a decrease in the quality of experience

you want to provide to your clients...less heavily used trails would seem to serve you and the national forest interests more effectively." District Ranger Anderson offered other trails with lower potential encounter rates as alternatives (Appeal Rec. 3, AR202).

Based on additional requests for use of Devil's Bridge, Secret Canyon, and Brins Mesa trails, District Ranger Anderson replied in a letter dated 10/23/98 to the Appellant's attorney, Mr. Mongini, describing that Mr. Wolf's access to those trails would result in "additional vehicles on roads that already sustain high traffic volumes, that is, his traffic, no matter how little, would increase traffic and sometimes, congestion. I consider it imprudent to add Marty's travel to these roads since we may be reducing use by current outfitters on these same roads through the reallocation process as described in our recent Amendment 12 to the Forest Plan." District Ranger Anderson also reiterates the offers of use on other trails over routes for which there are currently no concerns about volumes of traffic and which would result in shorter drive times, helping maximize client hiking time. The District Ranger goes on to state that "...the Forest Service makes decisions using an analysis of cumulative effects." In that discussion, District Ranger Anderson describes how heavy use and increased encounters impact experience, and states "We must address the impacts of total use." He cites Amendment 12 of the Forest Plan as starting the task of cumulative effects analysis, adding that the reallocation process for outfitter/guide use identified in Amendment 12 will help complete that cumulative effects analysis (Appeal Rec. 3, AR 214).

A close review of the Appeal reveals that although the Appellant states that his request is for 1-3 visits per week to Secret Canyon, Devil's Bridge and Brins Mesa trailheads via Vultee Arch Rd., the use actually requested in the Request for Relief ranges from six (6) to 18 vehicles per week (Notice of Appeal, Appeal Rec.1, pg. 11). District Ranger Anderson found that adding use in that area is not appropriate, describing that the present rate of encounter between national forest users and of the Vultee Arch Road is predicted to exceed the ROS standard adopted in Amendment 12 of the Forest Plan, and Appellant's requested use plus existing use exceeds ROS standards (Appeal Rec.16, pg.13).

The District Ranger would, in fact, be in violation of the National Environmental Policy Act and implementing regulations at 40 CFR 1500, the National Forest Management Act and implementing regulations at 36 CFR 219, and Forest Service manual and handbook direction (FSM 1920 and 1950, FSH 1909.15) if he authorized a use that violated Forest Plan standards without completing the appropriate level of NEPA analysis and making a decision to amend the Forest Plan to accommodate that use. Therefore, I conclude that the District Ranger appropriately considered the impacts to ROS of increased use of the Vultee Arch area and the Vultee Arch Road in particular, and acted both within the law and Forest Service policy and within his authorized discretion to deny Appellant additional access to Vultee Arch Road trailheads.

#### E. Viable Business Issue

Contention 1E: The Appellant contends that the Ranger's decision directly affects the Appellant's ability to conduct his business in a way that conforms to economic reality and the stated desires of the Forest Service to encourage the public to engage in the type of experience provided by the appellant.

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**Response 1E:** The 1997 Outfitter-Guide Administration Guidebook includes business viability as a discussion point when doing a needs assessment. It goes on to describe business viability as a complex concept affected by numerous factors. It states that "the agency's concern for viability should be to manage the availability of outfitted services and to see that they are distributed between a reasonable number of holders. Common sense should prevail." Other factors, however, are to be included in decision making, such as Agency Mission, Opportunities, Land capability, Social Capacity, Demand/Supply and Input From Others (Appeal Rec. 23).

As shown previously, EWT first received a permit for guided hikes in 1989. In 1990, the district Ranger agreed that a permit was not needed for access to some private land (Appeal Rec. 3, AR 26). In 1993 the permit was adjusted to authorize use of FR788 and FR9587, an increase in total authorized use of 28% (Appeal Rec. 3, AR 90; Appeal Rec. 16, pg. 3 ). In 1996 unlimited use of FR 9549 was authorized for access to private land (Appeal Rec. 3, AR 141). In 1996 the reported service days provided by EWT on FR 788 and 9587 represented 78% of his business (Appeal Rec. 16 pg. 13). The previous 4 year average showed these two roads representing 58% of EWT's actual use. This does not include the authorized access to private land. These adjustments indicate that Sedona Ranger District has given significant recognition to EWT's concern for viability during its history. Furthermore, Marty Wolf states in a letter dated September 9, 1998, that he has managed to "maintain a viable business (Appeal Rec. 3, AR 206)." Therefore, I conclude that the Ranger has reasonably considered the business viability factor along with other factors.

### **Decision**

My consideration of the information provided in your Appeal, the District Ranger's Responsive Statement, your Reply to the Responsive Statement, your oral hearing, the Appeal Record and National Forest Policy do not lead me to conclude that the Ranger used faulty rationale in issuing your September 25, 1998 special use permit. I affirm that the permit is adequate as approved by the District Ranger.

### **Instructions**

In reviewing the record, I can understand that the Appellant might have some apprehension about a future reallocation process regarding his standing relative to permit holders who have priority use permits. In recognition of the need for fairness, I am directing the District Ranger to ensure that annual permit holders are given equal consideration with priority use permit holders insofar as the annual permit holders would qualify for priority use. In addition, I am directing the Ranger to not give undo influence to permitted use in the reallocation process, but instead generally give the most weight to actual use. Furthermore, I am directing that the cumulative effects (commercial and noncommercial) of all uses should be considered together in terms of social and physical capacity. If it becomes clear through the above considerations that any outfitter was disproportionately blessed or restricted in their past use allocations, proportional adjustments to those allocations may be made without using the competitive process (if capacity is available).

**Second Level Review**

According to the appeal regulations at 36 CFR 251.87 (c)(2), this decision may be appealed and a second level review requested. The appeal for a second level review must be filed with the Regional Forester within 15 days of this decision. Any appeals for second level review must be addressed to the Regional Forester, Southwestern Regional Office, 517 Gold Avenue SW, Albuquerque, New Mexico 87102.

Sincerely,



**JIM GOLDEN**  
Appeal Reviewing Officer  
Forest Supervisor

cc: Michael E.J. Mongini  
Hufford, Horstman, McCullough & Mongini, P.C.  
**RRR - Z 134 644 793**  
323 North Leroux St.  
P.O. Box B  
Flagstaff, AZ 86002

Sedona District Ranger

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