

CLARK FORK RIVER OUTFITTER and GUIDE SPECIAL USE PERMITS

Decision Notice

Lolo National Forest
Plains/Thompson Falls Ranger District
Sanders County, Montana

June 2013

Lead Agency:	USDA Forest Service
Responsible Official:	Randy Hojem, Plains/Thompson Falls District Ranger
For Further Information, Contact:	Dave Wrobleski Plains/Thompson Falls Ranger District P.O. Box 429 Plains, MT 59859 (406) 826-3821

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Clark Fork River Outfitter and Guide Special Use Permits Decision Notice

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CLARK FORK RIVER OUTFITTER and GUIDE SPECIAL USE PERMITS Decision Notice

I. DECISION

It is my decision to implement the proposed action as presented in the Clark Fork River Outfitter and Guide Special Use Permits Environmental Assessment (EA) (and described below.)

Up to a total of 4,428 outfitter and guide service days will be permitted at the Ferry Landing and Cascade boat launch sites on the Clark Fork River during the peak season from May 1 to August 31. Fifty percent of the service days (2,214 service days) will be available at each of the launch sites. At this time, no limit will be placed on the number of service days for the rest of the year, but outfitters will still be required to report their use. Incidental outfitter and guide use on other National Forest System lands adjacent to the river for temporary day-use boat stops will also not be limited at this time.

My Decision includes the following Resource Protection Measures:

1. A sign board will be installed at the Cascade boat launch. On the sign board, information will be posted to notify site users of the availability of vault toilets in the Cascade campground across the highway.
2. Commercial use at the Ferry Landing and Cascade boat launch sites will be monitored by both law enforcement and recreation personnel several times a week during the peak season. Special use permit requirements will be enforced. Unpermitted outfitting use will be prohibited.
3. Standard provisions in the special use permit require proper disposal of trash and human waste; protection of Forest Service facilities; and if any cultural or historic objects are discovered they are to be left intact and the Forest Service is to be notified.
4. To address the potential risk of aquatic invasive species introduction and spread, special use permits will include a requirement that boats and trailers be cleaned prior to launching from Forest Service river access sites if the watercrafts have been previously used in any other waterbody besides the Cutoff section of the Clark Fork River. Cleaning requirements will include the following recommendations identified by Montana Fish, Wildlife and Parks:
 - Remove all sediment, vegetation, and aquatic animals from boats and trailers.
 - Drain all water from boat, including the motor, live well, and bilge.
 - Disinfect boat with a 20 percent commercial bleach solution and rinse boat and trailer with water. Pressure washing with hot water is preferred, if possible. If high pressure, hot water (greater than 140°F) is used, no soap, detergents, or chemicals are necessary.
 - Air dry boats and trailers for as long as possible between visits to different sites.

II. PURPOSE AND NEED FOR ACTION

The purposes of the project are to:

- meet the current and expected future requests for commercial boat-based outfitter and guide use within the available capacity; and
- remedy existing inconsistencies with commercial recreation use permitting in this area

III. RATIONALE FOR THE DECISION

I have authorized this project to remedy the current unfair situation and bring all commercial use into conformance with Federal regulations. Commercial outfitter and guide use of the two National Forest boat launches has been occurring for many years. Currently, only a few of these commercial users have special use permits from the Forest Service mostly due to past Agency policy to generally allow low-impact use. This has resulted in an unfair situation in which some outfitters pay fees to the Forest Service for use of National Forest System lands in this area and others do not. Now that overall recreation use (commercial and non-commercial) along this segment of the Clark Fork River has increased, it has become apparent that commercial use of National Forest System lands needs to be regulated using special use recreation permits.

My staff conducted a resource capacity analysis for boat-based recreation (both commercial and non-commercial) at the Ferry Landing and Cascade boat launches and determined additional commercial outfitted recreational use is appropriate. I believe my decision will maintain high quality recreation for both outfitted and non-outfitted users of river access sites on National Forest System lands along this section of the Clark Fork River.

I have made my decision based on the information in the Environmental Assessment and the Project File; and consideration of issues and public comments. I have determined my decision is consistent with the Lolo Forest Plan and all laws, regulations, and agency policies. I have also considered the potential cumulative effects. My decision addresses the purpose and needs of the project as described above.

IV. PUBLIC INVOLVEMENT

On October 3, 2011, scoping letters were mailed to landowners, outfitters, and organizations and individuals who have previously requested notification about this type of project. The scoping letter was also posted on the Lolo National Forest website and the project was listed in the Schedule of Proposed Actions, which is also available on the Forest website. The scoping letter included this proposal as well as a similar proposal to provide additional commercial outfitter use at access sites to the Thompson River located between Plains and Thompson Falls. Nineteen comment letters were received. Most comments were about the Thompson River proposal.

Due to public concerns about the Thompson River proposal, a public meeting was held on February 6, 2012. Approximately 13 people attended the meeting. The Forest Service solicited comments for another 30 days until March 6, 2012. In total, forty-six comments were received in various forms – mostly letters and emails. Again, most comments were about the Thompson River proposal.

Because there were few public concerns regarding the Clark Fork River proposal but numerous concerns regarding the Thompson River proposal, the Forest Service decided to separate the analysis of the two projects. This Decision only authorizes the Clark Fork River project. The Thompson River proposal will be addressed at a future date.

On May 9, 2013, copies of the Clark Fork River Outfitter and Guide Special Use Permits Environmental Assessment and Draft Finding of No Significant Impact were mailed to individuals and organizations that had previously commented on or expressed interest in the project. The EA was also posted on the Lolo National Forest website. The 30-day comment period on the EA began with the publication of a legal notice in the *Missoulian* newspaper on May 15, 2013. At the close of the comment period, three letters were received. Two letters expressed support for the project and one expressed comments that were addressed in the EA. The Forest Service's response to these comments is included in Appendix C of this document.

V. ISSUES

The Forest Service reviewed all comments received during the scoping period to identify issues, determine appropriate analysis procedures, and identify if there were any alternatives to the proposed action. The Forest Service found no significant issues or unresolved conflicts concerning issuance of additional outfitter service days that would require another alternative to address them. However a few concerns were expressed during the public scoping period. These concerns are addressed within the EA on pages 3-4.

VI. OTHER ALTERNATIVES CONSIDERED

Section 102 (2)(E) of the National Environmental Policy Act (NEPA) requires the Forest Service to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. My staff did this with the Proposed Action and the No Action alternative.

The results of taking no action would result in the following future condition:

- 1) No additional outfitter and guide service days would be permitted at the Ferry Landing and Cascade boat launch sites on the Clark Fork River despite the demand and available capacity.
- 2) Non-permitted outfitter and guide use at these two sites would be prohibited.
- 3) There would be no revenue generated from the issuance of additional special use permits, which could be used to maintain recreation site facilities.

I did not select the No Action alternative because it did not meet the project purpose and need. I believe we have appropriately addressed the public concerns in the EA.

VII. FINDINGS REQUIRED BY LAWS, REGULATIONS, AND POLICIES

I have determined that my decision is consistent with the laws, regulations, and agency policies related to the project. The following summarizes findings required by major environmental laws.

National Environmental Policy Act (NEPA)

NEPA requires Federal agencies to: (a) use a systematic interdisciplinary approach in planning and decision-making; (b) consider the environmental impact of proposed actions; and (c) consider alternatives to the proposed action. I find that the analysis process and documentation of the Clark Fork River Outfitter and Guide Special Use Permits is consistent with NEPA.

National Forest Management Act (NFMA)

Consistency with the Forest Plan

On April 9, 2012 the Department of Agriculture issued a final planning rule for National Forest System land management planning (2012 Rule) (77 FR 68 [21162-21276]). None of the requirements of the 2012 Rule apply to projects and activities on the Lolo National Forest, as the Lolo Forest Plan was developed under a prior planning rule (36 CFR §219.17(c)). Furthermore, the 2012 Rule explains, “[The 2012 Rule] supersedes any prior planning regulation. No obligations remain from any prior planning regulation, except those that are specifically included in a unit’s existing plan. Existing plans will remain in effect until revised” (36 CFR §219.17).

NFMA requires that projects and activities be consistent with the governing Forest Plan (16 USC 1604 (i)). The Lolo National Forest Plan establishes management direction for the Lolo National Forest. This management direction is achieved through the establishment of Forest Plan goals and objectives, standards and guidelines, and Management Area goals and accompanying standards and guidelines.

This decision is consistent with the standards, goals, and objectives of the Lolo National Forest Plan (USDA Forest Service 1986).

NFMA Diversity

The NFMA specifies that land management plans provide for diversity of plant and animal communities based on the sustainability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives, preserve the diversity of tree species similar to that existing in the region (16 USC 1604 (g)(3)(B)). The Forest Plan contains an array of components that contribute to the plant and animal (terrestrial and aquatic) habitat capability of the Lolo National Forest. Based upon consideration of these components of the Forest Plan, the Biological Assessments/Evaluations, and the analysis in the EA, I find this decision will continue to provide for a diversity of native species.

Endangered Species Act

Under provisions of this Act, Federal agencies are directed to seek to conserve endangered and threatened species and to ensure that actions are not likely to jeopardize the continued existence of any of these species. The biological assessments disclose that the project will have no effect on any Threatened or Endangered species or its habitat. This project is consistent with the Endangered Species Act.

Clean Water Act and State Water Quality Standards

Upon review of the Clark Fork River Outfitter and Guide Special Use Permits EA and the hydrology and fisheries reports in the Project File, I find that the activities associated with the Selected Action will comply with the Clean Water Act and Montana State Water Quality standards through application of best management practices.

National Historic Preservation Act

A comprehensive evaluation of cultural and historic resources was conducted and no sites were found at the boat launch facilities. The Selected Action is consistent with Forest Plan direction and Section 106 of the National Historic Preservation Act.

VIII. APPEAL PROVISIONS AND IMPLEMENTATION

Pursuant to 36 CFR part 215 regulations, this decision is not subject to appeal. Implementation may begin immediately after publication of legal notice of this decision in the *Missoulian* newspaper.

Further information about this decision can be obtained from Dave Wroblewski during normal office hours (weekdays, 8:00 a.m. to 4:30 p.m.) at the Plains/Thompson Falls Ranger District Office (Address: 408 Clayton Street; P.O Box 429; Plains, MT 59859); Phone/voicemail: (406) 826-3821.

/s/ Randy R. Hojem

RANDY R. HOJEM
District Ranger

June 17, 2013

Date

APPENDIX A

FINDING OF NO SIGNIFICANT IMPACT

After considering the environmental effects described in the Clark Fork River Outfitter and Guide Special Use Permits Environmental Assessment (EA), I have determined that the proposed action will not have a significant effect on the quality of the human environment based on the context and intensity of its impacts (40 CFR 1508.27). Therefore, an environmental impact statement will not be prepared.

/s/ Randy R. Hojem

June 17, 2013

RANDY R. HOJEM
District Ranger
Plains/Thompson Falls Ranger District
Lolo National Forest

Date

I base my findings on the following:

The Selected Action will implement activities that are of limited scope and duration, affecting only the immediate area around two established, well-used river access sites. The number of outfitter service days will not exceed the established resource capacity. The term of the special use permits will be for 10 years, with an annual review of outfitter operating plans. Resource protection measures (EA, page 5; DN, page 1) and standard permit requirements will minimize environmental effects.

The Forest Service found no significant issues or unresolved conflicts concerning alternative uses of available resources that warrant consideration of additional alternatives. Implementing regulations for NEPA (40 CFR 1508.27) provide criteria for determining the significance of effects. Significance, as used in NEPA, requires consideration of both context and intensity.

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale, rather than the world as a whole. Both short- and long-term effects are relevant (40 CFR 1508.27).

The effects of the proposed action are limited in context. The project is limited in size (outfitter use up to, but not exceeding, an established resource capacity at two existing river access sites) and duration (the term of the special use permits would be for 10 years). Effects are local in nature and are not likely to significantly affect regional or national resources. Annual review of outfitter operating plans provides an opportunity to address social or environmental resource issues if they arise.

Within the context of the landscape as a whole, the ecological consequences are not found to be significant in either the short- or long-term.

(b) Intensity. This refers to the severity of impact. The following ten aspects are considered in the evaluation of intensity (40 CFR 1508.27).

1. Impacts that may be both beneficial and adverse

I considered beneficial and adverse impacts associated with the proposed action as presented in the Clark Fork River Outfitter and Guide Special Use Permits EA. These impacts are within the range of effects identified within the Lolo National Forest Plan. Based on the specialist reports contained within the project file and summarized in the EA, I conclude that the specific direct, indirect, and cumulative effects of the proposed action are not significant, and this action does not rely on beneficial effects to balance adverse environmental effects.

The resource protection measures, permit requirements, and stipulations in the annual operating plans will effectively eliminate or reduce to negligible most of the potential impacts; therefore, implementation of the proposed action will not result in any adverse effects to forest resources (see EA, pages 6-10).

I find that the proposed action will be socially beneficial because it will remedy a currently unfair situation in which some outfitters pay fees to the Forest Service and others do not to use National Forest System lands. Once implemented, the proposed action will require all commercial outfitters who use National Forest System land to access the river to pay fees based on use and fair market value. Generated revenue will then be available to maintain recreation site facilities.

2. The degree to which the proposed action affects public health or safety

The proposed action will have no adverse effect on public health or safety. Standard requirements in the special use permit require proper disposal of trash and human waste. Outfitter use at the river access sites does not currently, and is not anticipated to, affect public health or safety.

The general public will continue to have access to the Clark Fork River across National Forest System lands

3. Unique characteristics of the geographic area, such as proximity to historic or cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas

The proposed action will not impact any known historic or cultural sites. Special use permits contain a standard requirement that the permittee notify the Forest Service if any “antiquities or other objects of historic or scientific interest” are discovered. The requirement also stipulates that the discovery be left intact.

The Clark Fork River in this area has been determined eligible for potential designation as a “recreation” river under the 1968 Wild and Scenic Rivers Act. The proposed action is consistent with the management guidelines for eligible rivers (Forest Service Handbook (FSH) 1909.12, section 82.51). I conclude that the proposed action will have no effect on unique resources.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial

Based on the limited context of the project, my review of the public comments received, and the analysis documented in the EA and Project File, I do not find any controversial effects to the human environment. In the NEPA context, “highly controversial” does not encompass all public opposition to a proposed action, but instead only applies to a substantial dispute as to the size, nature, or effect of an action.¹ The comments received on the project did not indicate controversy over the size nature or effect of the additional outfitter permits.

I conclude that the effects of the proposed action are not considered highly controversial by professionals, specialists, and scientists from associated fields of recreation, wildlife biology, soils, fisheries, and hydrology.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risk

Based on my review of public comments received on this project and the analysis documented in the EA and Project File, I conclude that there are no uncertain or unique characteristics in the project area which have not been previously encountered or that would constitute an unknown risk to the human environment.

A technical analysis (EA and Project File) that discloses potential environmental impacts (which is supportable with use of accepted techniques, reliable data, and professional judgment) has been completed, and I believe that the impacts of implementing this decision are within the limits that avoid thresholds of concern.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration

This proposal to increase special use permit service days at the Ferry Landing and Cascade river access sites up to, but not exceeding, the established resource capacity is a site-specific project that does not set precedence for future actions. Additional service days will not be advertised but will be available until the capacity is reached. Any proposed future project must be evaluated on

¹ Indiana Forest Alliance, Inc. v. United States Forest Service 325 F.3d 851 (10th Cir.2003) citing Wetlands Action Network v. United States Army Corps of Engineers, 222 F.3d 1105 (9th Cir.2000); Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1212 (9th Cir.1998) citing Greenpeace Action v. Franklin, 14 F.3d 1324, 1335 (9th Cir.1993)); Sierra Club v. United States Forest Service, 843 F.2d 1190, 1193 (9th Cir.1988) (accord); LaFlamme v. Federal Energy Regulatory Commission, 852 F.2d 389, 400-01 (9th Cir.1988)

its own merits and effects. The proposed action is consistent with the Lolo National Forest Plan and the capabilities of the land.

7. Whether the action is related to other actions with individual insignificant but cumulative significant impacts

Connected, cumulative, and similar actions have been considered and included in the scope of the analysis. The analysis accounts for past, present, and reasonably foreseeable future actions. Based on my review of the analysis and disclosure of effects in the EA, specialists' reports, Biological Assessments and Evaluations, and other analyses in the Project Record, I conclude that additional permitting of river access will not contribute potential cumulative adverse impacts (EA, pages 6-10).

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources

A comprehensive evaluation of heritage resources was conducted and there are no known sites that will be impacted (EA, page 7). Although unlikely, in the event that such resources are discovered during project implementation, they will be evaluated and protected. Special use permits contain a standard requirement that the permittee notify the Forest Service if any "antiquities or other objects of historic or scientific interest" are discovered. The requirement also stipulates that the discovery be left intact.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973

This project will have no effect on any threatened or endangered species or its habitat (EA, pages 7-9).

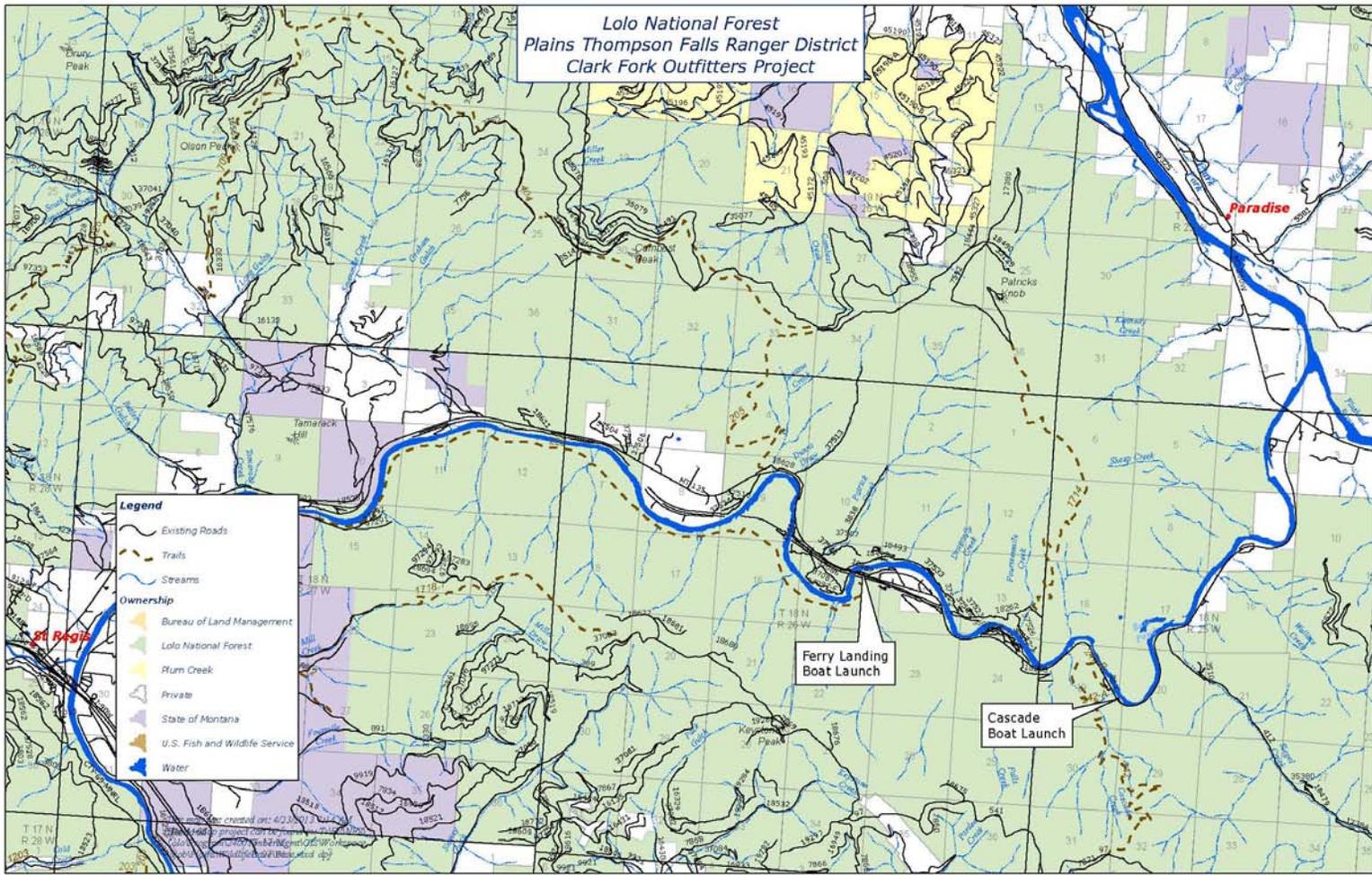
10. Whether the proposed action threatens a violation of Federal, State, or local law requirements imposed for the protection of the environment

The proposed action meets all federal, state, and local laws, including those for heritage resources, water quality, and threatened and endangered species (EA, pages 7-9). It also meets the National Environmental Policy Act disclosure requirements (Clark Fork River Outfitter and Guide Special Use Permits EA and Draft Finding of No Significant Impact).

The proposed action is consistent with the National Forest Management Act (NFMA) and the Lolo National Forest Plan. This proposal does not require any Forest Plan amendments.

APPENDIX B
Vicinity Map

Lolo National Forest
Plains Thompson Falls Ranger District
Clark Fork Outfitters Project



APPENDIX C

Response to Comments

The Clark Fork River Outfitter and Guide Special Use Permits Environmental Assessment was completed in May 2013 and was sent to those who commented on the project or requested to be kept informed about the project. The EA was also posted on the Lolo National Forest website. A legal notice was published in the *Missoulian* newspaper on May 15, 2013 which began the official 30-day comment period. At the close of the comment period, three comment letters were received and are filed in the project file.

Tim and Joanne Linehan

Comment 1: “Personally, I don’t think the Cascade site needs to be improved and would suggest saving the resource dollars. It’s actually perfectly good. Frankly, it’s a dream compared to some of the access sites we use around the state.”

FS Response: The Forest Service will be installing a signboard at the Cascade site, but no other improvements are proposed at this time.

Comment 1: “I also wanted to thank you for reminding the general public that outfitter and guide use is limited to launching and taking boats out of the water. As we both know, there is often a perceived notion about outfitter use especially when the numbers are included and people see service days in the thousands and don’t really understand the big picture. Like the Kootenai, the outfitter and guide use on the lower Clark Fork is actually relatively small compared to the other, more famous rivers around the state. Generally, I only see one or two other guides at the Ferry Landing or Cascade ramp on any given day.”

FS Response: Thank you for your comment.

Peter Grubb

Comment 1: “I am in full support of this and am happy such a common-sense approach is being taken.”

FS Response: Thank you for your support.

Myles Sexton

Comment 1: “The Clark Fork River is flowing too high to fish safely in May or June. That would leave July and August for most of the service days you are intending to permit.”

FS Response: The traditional use period for commercial boat-based recreation in this area has been May through August. Of course, early season river flow levels vary from year to year which can affect recreational use.

Comment 2: “The boat launch at Cascade needs some work done on it. There is a very large rock that needs to be removed, and the parking is not big enough for the use days proposed.”

FS Response: As stated in the EA on page 4, the Cascade boat launch is an undeveloped site that has been successfully used for several decades by both outfitters and the general public. The Forest Service has not received complaints about natural features impeding use of the site. Outfitters who find the Cascade boat launch unsuitable will not likely request use of the site. Alternate boat launch sites are available.

Parking is somewhat limited at the Cascade boat launch site, but has been adequate to accommodate existing use. Because the site is likely already being used to a market-based capacity by both permitted and unpermitted commercial use, it is not expected that this project would result in a noticeable increase in commercial use at this site. The Forest Service will monitor use and can modify commercial permits if congestion at the site becomes a concern.

Comment 3: The proposed total of 4428 days is a large increase from the 600 days permitted now. Maybe starting with an increase of half of the assessment cap and work up would be better.”

FS Response: This decision would allow *up to* the 4,428 service days. However as stated in the EA, it is unlikely that the full capacity would be reached within the foreseeable future because the boat launch sites are likely already being used close to a market-based capacity by both permitted and unpermitted outfitters. Thus, this project is not expected to result in much of a noticeable increase in commercial use above the currently used 600 service days. The Forest Service will monitor use patterns and can modify commercial permits if environmental or social conflicts arise.