



ADVOCATES for the **West**
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December 1, 2014

Via Certified Mail, Return Receipt Requested

Tom Vilsack, Secretary
Department of Agriculture
1400 Independence Ave., SW
Washington, D.C. 20250

Tom Tidwell, Chief
USDA Forest Service
1400 Independence Ave., SW
Washington, D.C. 20250-0003

Charles Mark, Forest Supervisor
Salmon-Challis National Forest
1206 S. Challis Street
Salmon, ID 83467

Re: Idaho Predator Hunting Derby

Dear Messrs:

The undersigned local, regional, and national conservation groups write to request that the Forest Service notify the organization Idaho for Wildlife (IFW) that it is not authorized to utilize the Salmon-Challis National Forest (SCNF) for its 2015 Predator Derby. This organized hunting event is scheduled to take place annually for three days beginning January 2, 2015, around Salmon, Idaho. According to IFW, up to 500 participants would compete on private, state, and National Forest lands to kill the most wolves, coyotes, and other wildlife in a competition for cash prizes.

Earlier this year, IFW submitted applications to both the SCNF and to the Idaho Falls District of the Bureau of Land Management (BLM) seeking authorization to hold the Derby on public lands. BLM acknowledged that a Special Recreation Permit was required to hold this competitive event on BLM-managed lands, and began processing the permit and preparing an Environmental Assessment pursuant to the National Environmental Policy Act. After holding public comment periods – which generated nearly 100,000 comments opposing the Derby – BLM initially approved the Derby but rescinded its approval shortly thereafter.

According to BLM, because of ambiguity and ongoing changes being made to IFW's proposal – including “material and substantive” changes to the event as recently as November 20 – BLM was unable to determine whether issuing a permit was appropriate. BLM accordingly withdrew its approval of the permit and notified IFW that Derby participants are not authorized to use BLM-managed land for any competitive or organizational activities and that the Derby cannot offer competitive credit for wildlife taken on BLM-managed lands.¹

In contrast, the Forest Service has not yet required a permit, held public comment, or evaluated the impacts in response to IFW's request for a Special Use Permit. Rather, the Forest Service notified IFW by letter dated August 19, 2014 that no permit was needed to hold the Derby on the SCNF. In light of IFW's recent material and substantive changes to the event, however, the Forest Service must take a fresh look at the Derby and determine whether it requires a Special Use Permit as now proposed. In the meantime, the Forest Service must notify IFW that it is not authorized to hold the Derby on the SCNF until the Forest Service has completed this review and, as explained below, unless IFW obtains a permit.

The Forest Service's August 19 determination was wrong. Forest Service regulations provide that all uses of National Forest lands are “special uses” and must be authorized by the Forest Service through issuance of a Special Use Permit. 36 C.F.R. 251.50(a). Use and occupancy of National Forest land without a Special Use Permit is prohibited. 36 C.F.R. 261.10(k). Certain enumerated activities are exempt from the Special Use Permit requirement, including noncommercial recreational activities, such as hiking, fishing, and hunting. 36 C.F.R. 251.50(c). But hunting and other recreational activities do require a Special Use Permit if the activity is a commercial event or a noncommercial group use, and the Forest Service has consistently treated events like IFW's Derby as either a “commercial event” or as a “noncommercial group use” requiring a Special Use Permit.

An event or activity is “commercial” if an entry or participation fee is charged, or if the primary purpose is the sale of a good or service; commercial events require a permit regardless of the number of people involved. *See* 36 C.F.R. 251.51. The Forest Service's webpage on commercial recreation events lists the following examples: “animal, bicycle, motocross, or triathlon (sic) races; jeep rallies; dog trials; fishing contests; rendezvous; rodeos; adventure games; youth treks; wagon trains; concerts; and other similar events.”² As it is not materially different, IFW's Derby also qualifies as a commercial recreation event requiring a permit.

In its August 19 letter, the Forest Service acknowledged that the Derby organizers would charge a fee. Yet, the Forest Service determined that the Derby is “not a commercial event occurring on NFS land” because Derby participants would pay the fee

¹ <https://www.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=53583> (visited Nov. 26, 2014).

² http://www.fs.fed.us/specialuses/special_com_uses.shtml (visited Nov. 26, 2014).

on private property (not on the SCNF), and because participants are not “being specifically invited to an area of NFS land.” This is wrong. Under IFW’s proposal, Derby participants would be invited to hunt specifically on the SCNF, which is an area of National Forest land, as well as on nearby private lands. Furthermore, where the participation fee is paid does not matter, so long as the event includes use of National Forest land. So if IFW intends to charge a fee and to include the SCNF in the Derby, then this is a commercial recreation event requiring a permit.

Even if the Derby is not commercial, a Special Use Permit is still required as it is a “group use” event, defined as “any activity conducted on National Forest System lands that involves a group of 75 or more people, either as participants or spectators.” 36 C.F.R. 251.51. According to the Forest Service webpage on noncommercial group uses, examples include “weddings, church services, endurance rides, regattas, camping trips, hikes, music festivals, rallies, graduations, and races.”³ IFW seeks to have up to 500 participants – plus an unknown number of spectators – use the SCNF to competitively hunt in the Derby. This far surpasses the 75-person threshold for a group use. Yet, in the August 19 letter, the Forest Service failed to even evaluate whether the Derby qualifies as a group use.

By failing to require a Special Use Permit, the Forest Service has avoided its duty to evaluate important criteria for protecting our public lands. For commercial activities or events, the Forest Service is required to screen each permit application to ensure the proposed use, among other requirements: is consistent with other laws; is consistent with the applicable forest land use plan; will not pose a serious or substantial threat to public health or safety; and will not unreasonably conflict or interfere with existing authorized uses of the National Forest or use of adjacent non-National Forest lands. *See* 36 C.F.R. 251.54(e)(1). And the Forest Service “shall reject” the application if the proposed use: would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or would not be in the public interest. *See id.* at 251.54(e)(5).

For noncommercial group uses, the Forest Service must deny an application for a number of reasons, including if the proposed activity: is not consistent with the applicable forest land use plan; materially impacts the characteristics or functions of the certain environmentally sensitive resources or lands, including protected and sensitive species, inventoried roadless areas or potential wilderness areas, and others; will delay, halt, or prevent other existing uses or activities on National Forest lands; or will pose a substantial danger to public safety. *See* 36 C.F.R. 251.54(g)(3)(ii). These requirements ensure that national forest lands are protected for the enjoyment of all Americans.

The Forest Service’s hands-off approach to the Derby is particularly troubling given the significance and potential impacts of this event. As already mentioned, BLM held two public comment periods during its permitting process which generated nearly 100,000 total public comments – nearly every one of which expressed opposition to the Derby. Allowing the Derby on SCNF lands directly undercuts wolf recovery, which

³ http://www.fs.fed.us/specialuses/special_non_com_uses.shtml (visited Nov. 26, 2014).

hinges on building social acceptance for wolves, particularly in central Idaho's core refugia. The Derby devalues predators and contravenes the Idaho Department of Fish and Game's policy against such events. The Derby also poses serious threats to public safety, including to winter recreationists and local members of our organizations who live adjacent to or near SCNF lands. But by shutting out public involvement, the Forest Service never considered these important issues.

By avoiding proper application of Forest Service regulations and policy and without a public process, the Forest Service is turning a blind eye to these serious safety and environmental issues. Therefore, we request that the Forest Service promptly inform IFW that Derby participants are not authorized to utilize National Forest lands for its event and that IFW not offer competitive credit for wildlife taken on these lands until the Forest Service properly reevaluates IFW's proposal.

Sincerely,

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