

AMERICA OUTDOORS

PHOTOCOPY
PRESERVATION

Two **Boc** locations to serve the Ozark adventurer.

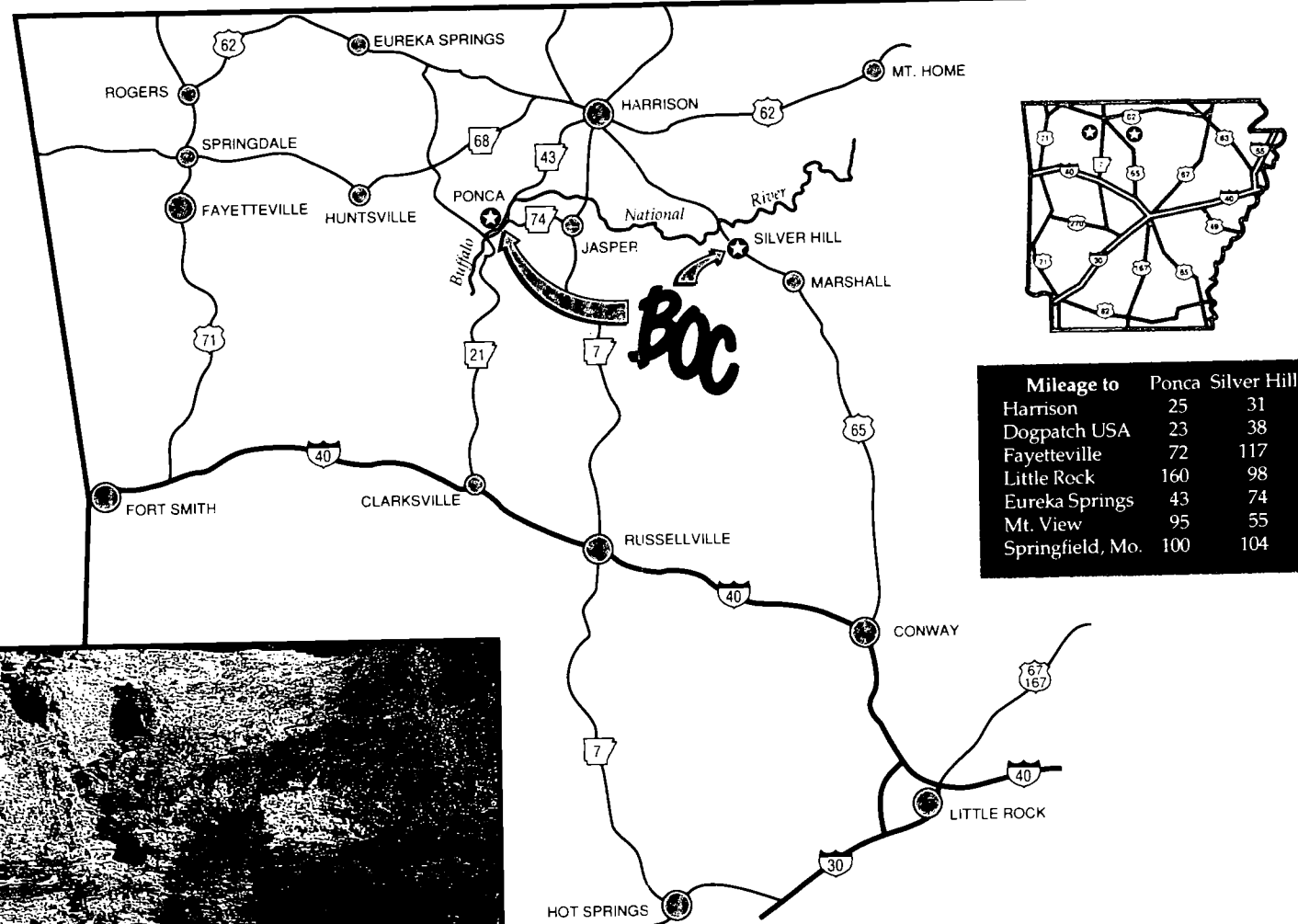


Photo by Mike Mills

"Reflections of Arnold Bend" – The Buffalo is an exceptional four-season photographic opportunity.

Seasonal Reminders

SPRING: • Make reservations early • Prepayment required • Pack for possible cool, rainy weather • Watch regional weather patterns • Check in early • Bring two sets of vehicle keys • No alcoholic beverages sold on the river.

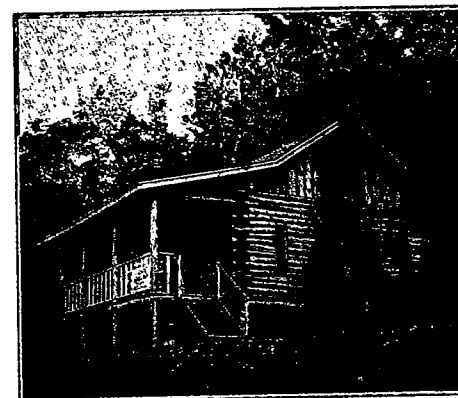
SUMMER: • Saturdays book quickly • Take your time, there's more daylight • Bring sunscreen • Take along dry clothes • Bring two sets of keys for vehicle shuttles • Diving from bluffs is dangerous any time of year.

Boc

Buffalo Outdoor Center
P.O. Box 1
Ponca, Arkansas 72670
(501) 861-5514
Jct. Ark. Hwys. 43 and 74

Buffalo Outdoor Center
Route 1, Box 56
St. Joe, Arkansas 72675
(501) 439-2244
U.S. Hwy. 65 S., Silver Hill

Boc cabins for Ozark getaways!



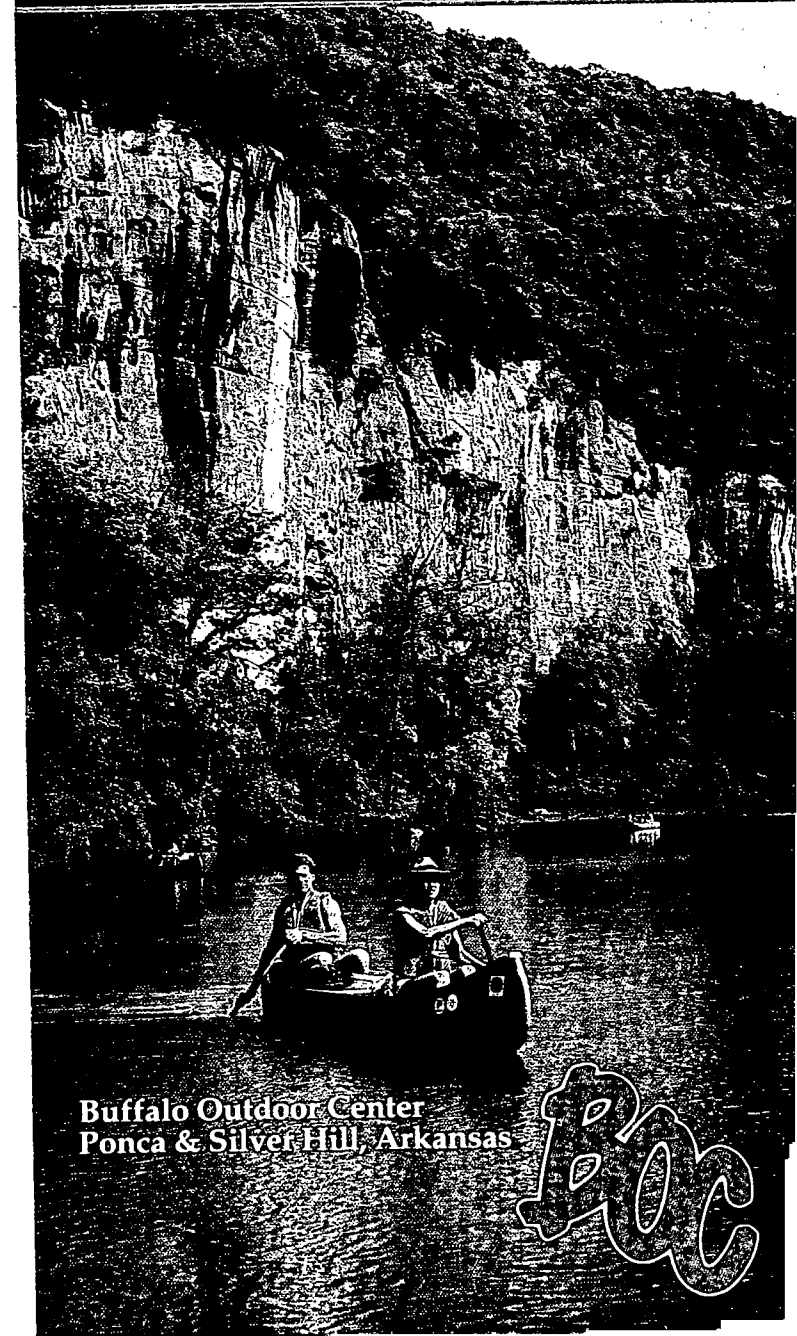
The magnificent Buffalo – America's stream
Of all the rivers in the nation, the Buffalo was the first to be protected by Congress as a free-flowing stream with "National River" status. Flowing roughly west to east, it travels through some 132 miles of the most spectacular section of the Arkansas Ozark highlands. Multi-colored bluffs tower 500 feet or more above the water. Lofty waterfalls, massive boulders and hairpin turns are characteristic of the river's beauty and charm. The Buffalo is truly a stream any American can claim with pride.

The country's first national river



1 Buffalo National River Country

In the Arkansas Ozark Mountains



Buffalo Outdoor Center
Ponca & Silver Hill, Arkansas

Boc

Buffalo Outdoor Center—We Rent Ozark Adventure

Kick back in a cabin... enjoy a getaway



You haven't "done" the Ozarks until you've floated the Buffalo National River. It's tops for magnificent scenery and fun in the outdoors. Besides complete canoe and raft rentals for individuals and groups, BOC offers johnboats and guides for smallmouth bass fishing, a crackling fire and a place to be alone.

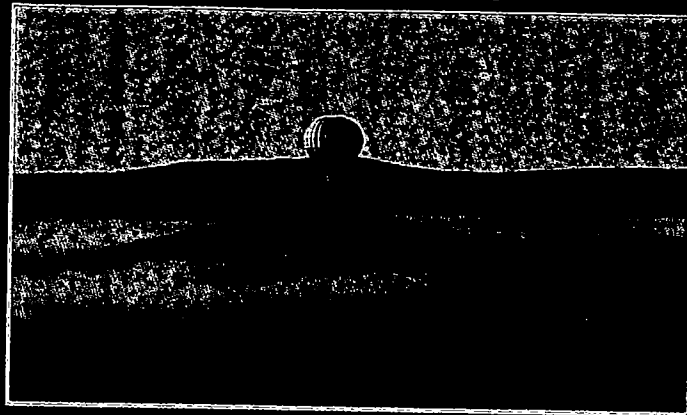
Canoes, Shuttles & Balloons—The Buffalo Is Calling

Mountain cabins—the ultimate getaway



BOC's log cabins are perfect for unwinding after a day of fun in the Ozarks. Inside the rustic exteriors are all the comforts and conveniences you need for an enjoyable stay. Cabins sleep six persons and include: • Loft bedroom with two double beds • Main floor bedroom • Rock fireplace • Air conditioning • Refrigerator • Cathedral ceiling with ceiling fans • Linens • Full bath • Fully-equipped kitchen (including cooking utensils and tableware) • Front porch with barbecue grill and swing • NO PETS.

Hot air balloons – breathtaking views



Hot air ballooning in the "Miss Arkansas" is a great way to see the river valley and surrounding Ozark Mountains. It's one of the grand adventures at BOC you don't want to miss. Whether it's a birthday, anniversary, honeymoon or vacation dream come true – this is the ultimate way to see the Ozarks.

A crackling fire and a place to be alone



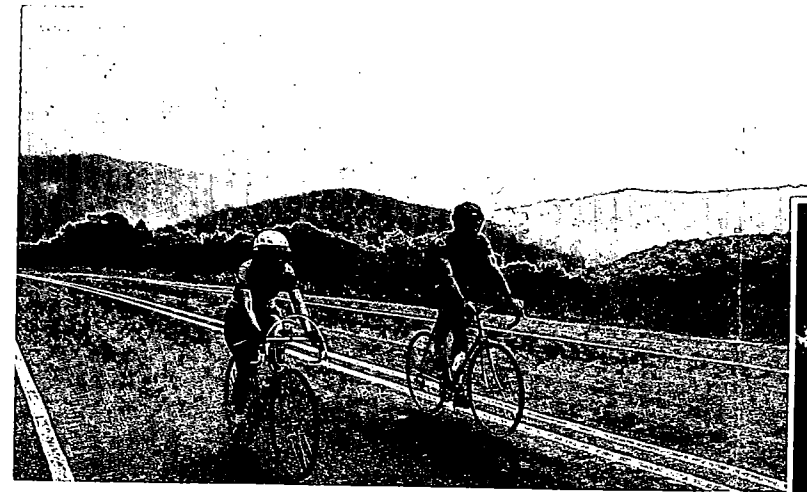
**Middle River
SILVER HILL
(501) 439-2244**

**Upper River
PONCA
(501) 861-5514**

BOC

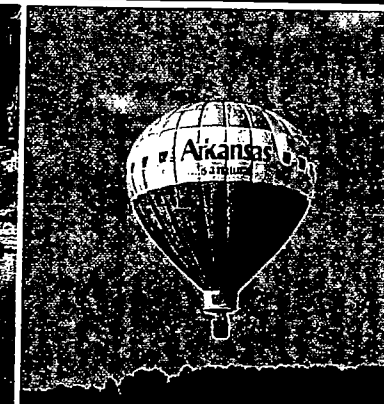
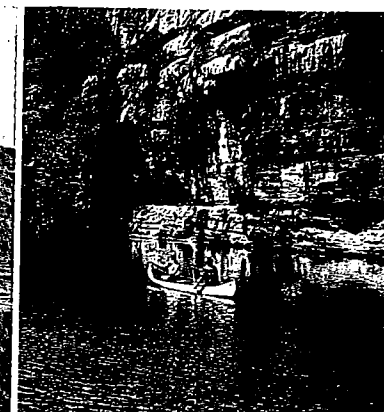
Buffalo Outdoor Center
Ponca & Silver Hill,
Arkansas

*Approved concessionaire of National Park Service for canoes, rafts and johnboats.



Go from paddles to pedals on a BOC mountain bike.

Spots along the bank invite a closer look.



1. Guided johnboat fishing for feisty smallmouths. 2. Limestone bluffs frame masterpiece portraits. 3. Float the Ozarks high and dry on a champagne flight. 4. Quiet pools let you float at your leisure.



Rapids encourage paddlers to work as a team.



"Skull Bluff" draws curious Buffaloes.



For Reservations Call:
Ponca (800) 221-5514
Silver Hill (800) 582-2244

***CANOES, PADDLES, LIFEVESTS**

Per Day\$25
Saturdays\$30
Shuttle & Hauling VaryAverage \$20

***RAFTS**

Per Person, Per Day\$15
With Guide and Lunch\$40

***GUIDED JOHN BOATS at Silver Hill**

Per Person, Per Day (2 person minimum) ...\$75
Includes Guide, Bait, & Lunch

MOUNTAIN BIKES at Silver Hill

1/2 Day\$12.50
Full Day\$17.50

HORSEBACK RIDES at Ponca

Ride the Trails of Ponca Creek along through the meadows and woods, along small creeks and bluffs of the mountain trails.

Per Person\$25.00

HOT AIR BALLOONING

A ride in the "Arkansas is a Natural" Balloon is possibly the ultimate Ozark experience.

Per Person (Minimum 2)\$150

BOA

Buffalo Outdoor Adventure is a 3-day program for teenagers which includes camping, canoeing, rappelling, caving, swimming, snorkeling, ropes courses, hiking, and much more! Call BOC Silver Hill for details.

Reservations Require 100% Prepayment

No Refunds 14 Days in Advance

We Accept Visa, MC, Personal Checks & Money Orders

***Approved Concessionaire of National Park Service**



Ponca
(800) 221-5514

Silver Hill
(800) 582-2244

BOC CABINS

Each cabin is equipped with a full kitchen including all cooking and eating utensils, barbecue grill, and microwave. All towels and linens are furnished. Each cabin has a fireplace and a heater/air conditioner.

ABSOLUTELY NO PETS ARE ALLOWED!
100% pre-payment is due 30 days prior to rental or upon reservation if less than 30 days. **NO REFUNDS** after 14 days prior to rental. **ALL CHILDREN UNDER 12 ARE FREE.**

BUFFALO CABINS

Persons	per night
2	\$ 70
3	\$ 82
4	\$ 94
5	\$106
6	\$118
Special 6 nights	\$550

MOUNTAIN TOP CABINS

2	\$90
3	\$105
4	\$120
5	\$135
6	\$150
7	\$165
8	\$180

MOUNTAIN ECSTASY & PRESIDENTIAL CABINS

2	\$125
4	\$160
Honeymoon Special (4 nights)	\$400

All prices subject to 7.5% sales tax.
\$10 service charge deducted on all refunds.

Oregon Guides & Packers Inc.
PO Box 10841
Eugene Oregon 97440



BULK RATE
U.S. POSTAGE PAID
EUGENE, OREGON
PERMIT NO. 532

PHOTOCOPY
PRESERVATION

Fishing
Gourmet Cooking
Specializing in:
Family Trips
Corporate Trips



Whitewater
Overnight Trips
Fall Combo:
Steelhead -
Chucker Hunt

R.BRUCE GREENE

(503) 726-9471 - days

"A Quality Guide Service"

1567 Main Street • Springfield, Oregon 97477

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The

Oregon Outfitter

January
1994

Oregon Guides & Packers Inc. PO Box 10841 Eugene Oregon 97440

AO Selects Tims

OG&P Seeking Confluence for Oregon in '95 or '96

by Bob Zagorin

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Auction Summary – p. 4
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See you in Eugene
January 27-28!

Convention Agenda – p.5
Convention Registration –
centerfold Insert

The 1994 Oregon Guides & Packers

Outdoor Adventure Auction

Friday, January 28, 1994

Eugene Hilton Conference Center

Buffet Dinner 6:00 p.m. ~ Silent Auction 6:30 p.m. ~ Oral Auction 7:00 p.m.

Sid Voorhees Auctioneer

1994 Outdoor Adventure Auction Donation Form

Name _____ Business _____

Address _____ City _____ State _____ Zip _____

Phone _____ ☐ Please contact me to arrange a minimum bid.

I would like to donate the following item(s) to the Outdoor Adventure Auction _____

Restrictions _____ Retail Value _____

Oregon Guides & Packers is a nonprofit association dedicated to providing professional outdoor recreation services to the public, in partnership with governing agencies, in accordance with the principle of 'Wise Use Without Abuse'. Your contribution may be tax deductible. Please check with your accountant. Our IRS nonprofit identification number is 93-0825817.

Oregon Guides & Packers Association

PO Box 10841, Eugene OR 97440 • 503-683-9552

Bob Zagorin, Executive Director

REGISTRATION FORM

OREGON GUIDES & PACKERS 1994 ANNUAL CONVENTION AND AUCTION EUGENE HILTON

January 27-28 / OGP Board January 26 & 29

NAME: (LAST) _____ (MI) ____ (FIRST) _____

BUSINESS NAME: _____

MAILING ADDRESS:

STREET/P.O. BOX _____

CITY/STATE/ZIP _____

PHONE BUS/ (____) _____ HOME/ (____) _____

OGP MEMBERSHIP STATUS:

OUTFITTER _____

GUIDE _____

REGISTRATION FEES

AMOUNT PAID:

BASIC REGISTRATION:

SINGLE @ \$25.00 -OR- COUPLE @ \$40.00 \$ _____

OPTIONAL MEALS/EVENTS:

WEDNESDAY DINNER/OGP BOARD & SPOUSES:

\$22.00 X ____ = \$ _____

THURSDAY LUNCH: \$12.50 X ____ = \$ _____

THURSDAY BANQUET: \$25.00 X ____ = \$ _____

FRIDAY LUNCH: \$12.50 X ____ = \$ _____

WINERY TOUR AND LUNCH: \$11.00 X ____ = \$ _____

TOTAL AMOUNT PAID:

\$ _____

MAKE YOUR CHECK PAYABLE TO:

OREGON GUIDES AND PACKERS ASSOCIATION INC.

(Rcd By _____ Check # _____)

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Dale Pearson A Friend is Gone

by Steve Beyerlin

Dale Pearson, aide to Oregon House member Dave McTeague, died suddenly on Monday, February 7, 1994 of a heart attack.

Dale was more than a legislative aide to Dave McTeague, he was also his best friend and number one supporter. They were a team. Dale will be missed tremendously by Dave and OG&P.

We, at OG&P, will remember Dale for his willingness to help us on our fisheries issues in the Oregon legislature; telling us who to see and how to proceed; breaking the trail for us through an environment we didn't know but he knew well. He was our guide and our friend.

Dale was on the ODFW fish screening task force and wrote the amendments to the Watershed Health Bill (SB 1112) which is providing 10 million dollars for the Grande Ronde and South coast. This was just one of many bills which would have been lost without him.

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Dale's fisheries work will live on in more fish in Oregon's streams. I hope we all remember how we have come this far, it was with help from men like Dale Pearson.

Thanks, Dale, for a job well done. We will miss your guidance.



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And there are a host of tough issues to tackle. On the one hand, many resources are troubled and need help. On the other, resource agencies are increasing regulations and fees while restricting access. Caught in between are the guides and the public we serve. OG&P is committed to finding a responsible balance that will allow reasonable access without pricing guide services beyond the reach of the average American.

OG&P now has the financial resources to help. This year's 'Outdoor Adventure Auction' set a new record with sales of \$62,000 - a 23% over 1993. The 1994 budget includes a 14% increase over 1993 but OG&P dues are still among the lowest of any guide association in the country.

1994 Convention

Working Group Notes - p. 4
Resolutions - p. 7

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OREGON OUTDOORS

Fishing • Hunting • Packing • River Running

The New
Oregon Trail



OFFICIAL 1993 DIRECTORY
Oregon Guides & Packers Association

Oregon Guides & Packers Inc.

PO Box 10841

Eugene Oregon 97440



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Specializing in:
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Corporate Trips



Whitewater
Overnight Trips
Fall Combo:
Steelhead -
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Sid Voorhees Auctioneer

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Address _____ City _____ State _____ Zip _____

Phone _____ ☐ Please contact me to arrange a minimum bid.

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Bob Zagorin, Executive Director

REGISTRATION FORM

OREGON GUIDES & PACKERS 1994 ANNUAL CONVENTION AND AUCTION EUGENE HILTON

January 27-28 / OGP Board January 26 & 29

NAME: (LAST) _____ (MI) ____ (FIRST) _____

BUSINESS NAME: _____

MAILING ADDRESS:

STREET/P.O. BOX _____

CITY/STATE/ZIP _____

PHONE BUS/ (____) _____ HOME/ (____) _____

OGP MEMBERSHIP STATUS:

OUTFITTER _____

GUIDE _____

REGISTRATION FEES

AMOUNT PAID:

BASIC REGISTRATION:

SINGLE @ \$25.00 -OR- COUPLE @ \$40.00 \$ _____

OPTIONAL MEALS/EVENTS:

WEDNESDAY DINNER/OGP BOARD & SPOUSES:

\$22.00 X ____ = \$ _____

THURSDAY LUNCH: \$12.50 X ____ = \$ _____

THURSDAY BANQUET: \$25.00 X ____ = \$ _____

FRIDAY LUNCH: \$12.50 X ____ = \$ _____

WINERY TOUR AND LUNCH: \$11.00 X ____ = \$ _____

TOTAL AMOUNT PAID:

\$ _____

MAKE YOUR CHECK PAYABLE TO:

OREGON GUIDES AND PACKERS ASSOCIATION INC.

(Rcd By _____ Check # _____)

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OREGON OUTDOORS

Fishing • Hunting • Packing • River Running

The New
Oregon Trail



OFFICIAL 1993 DIRECTORY
Oregon Guides & Packers Association



February 22, 1994

Mr. Brian Burke
Domestic Policy Council
Executive Office of the President
Washington, D.C. 20500

Dear Mr. Burke:

Mike Mills of Ponca, Arkansas recently talked with you regarding an appointment to discuss an issue related to rural economic development and the use of public lands. Permitting policies of the federal agencies appear to be in disarray, creating uncertainty and instability among thousands of recreation businesses.

For example, the Forest Service is attempting to make significant changes in terms and conditions of its recreation special use permit for outfitters and guides. These changes may eliminate a long-standing policy of giving preferences in permit renewal for companies, who, having risked the investment, have operated through the five-year term in a satisfactory manner. In fact, the Forest Service maintains that these permits are not renewable and that a new permit must be issued. We maintain that outfitters who have been evaluated satisfactorily and met the terms of their permit, which may include standards for low impact techniques, quality service, and environmental education, should be allowed to renew.

What rationale for why permits are not renewable?

why The Park Service, on the other hand, appears poised to eliminate many backcountry guiding services throughout units of the National Park system. This is occurring in a number of ways, foremost of which is elimination of the Commercial Use Licenses without a replacement means of permitting outfitted recreation opportunities for the public.

The immediate impact will be upon hundreds of small businesses in rural areas. Banks and lending institutions do not accept this situation as a favorable condition upon which to base loans to small businesses. Many examine permits prior to providing loans. GAO has determined that over 9,000 permits (they use the term concessions) are issued for activities on federal lands. Many are recreation service providers who operate on lands managed by the USDA Forest Service, the Bureau of Land Management, the National Parks Service and other agencies, such as the US Fish and Wildlife Agency. Many businesses are at risk.

P.O. Box 1348, Knoxville, TN 37901
615-524-4814

Families and international visitors who do not possess the skills to visit many of these areas on their own will lose the opportunity if outfitters, guides and other service providers are eliminated. We understand the need for the agencies to eliminate those who are not doing a good job and are fully willing to accept fair evaluations as part of the permitting process to identify those with a commitment to quality, service and resource stewardship.

We are asking the administration to develop a policy that is recognized by all agencies -- one that takes into account the needs for viable business terms, as well as, the goals of the resource management plan and the need to protect the public's health and safety. Enclosed is a briefing on the need for a policy decision on this issue. In the absence of an overarching administration policy, each agency seems to be going its own way on this issue. We are requesting a meeting with you on Friday, March 4, 1994 to further discuss this matter.

Those who will be attending the meeting include:

Mike Mills
Midwest Regional Chairman
America Outdoors
Buffalo Outdoor Center
P.O. Box 1
Ponca, AR 72760
501-861-5514

Doug Tims
President
America Outdoors
Northwest River Co.
P.O. Box 403
Boise, ID 83701
208-344-7119

Wann Brown
Vice President -- West
America Outdoors
All 'Round Ranch
P.O. Box 153
Jensen, UT 84035
801-789-7626

David Brown
Executive Director
America Outdoors
P.O. Box 1348
Knoxville, TN 37901
615-524-4814

Bruce Green
President, Oregon Guides and Packers
Wilderness River Outfitters
1567 Main Street
Springfield, OR 97477
503-726-9471

Please advise me about the time of the appointment. Ms. Pankonin is coordinating our overall meeting and will work with you on the details.

Thank you for giving this matter your attention.

Sincerely,

David L. Brown
Executive Director

The Standardization of Permitting Policies Among Federal Agencies for Outfitters, Guides and Similar Recreation Service Providers

by David L. Brown
America Outdoors

Overview

The pace of change and reform in permitting and concessions management is creating confusion and disarray among the federal resource managers and recreation service providers. Concessions reform is moving through Congress.^{1,2} Commercial Use Licenses (CUL's), issued routinely in units of the National Park Service for some outfitting and guiding and other recreation related services, have been criticized by the General Accounting Office.³ As a result, some Parks are eliminating CUL's and attempting to replace them with more burdensome concessions contracts that require high levels of bureaucratic overhead. In some areas recreation opportunities are being eliminated.^{4,5} An increasingly frequent justification is the absence in resource management plans of a demonstrated public "need" for such services. ✓

The Forest Service and Bureau of Land Management are operating under long established policies that provide a fair rate of return to the government, although some improvements in administration of the policy are desirable. Both agencies have historically used special use permits to manage services provided by outfitters and guides on public lands. The core language

¹ S. 208, National Park Service Concessions Policy Reform Act, ordered reported February 2, 1994, by Senate Committee on Energy and Natural Resources.

² H.R. 1493, National Park Service Concessions Policy Reform Act of 1993 (see also H.R. 473 and H.R. 2146).

³ United States General Accounting Office, Report to the Chairman, Committee on Environment, Energy, and Natural Resources Subcommittee, Committee on Government Operations. *Federal Lands: Improvements Needed in Managing Short-Term Concessioners*. U.S. House of Representatives, Washington, D.C.: 1993. p.p. 12.

⁴ Lancaster, John O. (Superintendent, Glen Canyon National Recreation Area), letter to Wilderness Inquiry. Page, Arizona: November 1993, p. 3.

⁵ America Outdoors Action Alert on Canyonlands National Recreation Area Resource Management Plan. Knoxville, TN.: February, 1994.

distinction
made between
concessioners and
outfitters.
Outfitters permit
are for short-term,
concessions are for
long-term.

in these permits is also issued for gas lines and other special uses across National Forests⁶. The strict liability terms included in these permits are not appropriate for outdoor recreation⁷.

Therefore, the Forest Service is considering a separate permit for outfitters and guides.

We believe these issues reflect the need for a specific policy for recreation service providers on federal lands that takes into account the need for resource protection, business viability, and public health and safety. ✓

Need for a Standardized Permitting Policy for Outfitting and Guiding on Public Lands

Outfitters, guides, and similar companies provide access to the backcountry for relatively inexperienced recreationists for whitewater rafting trips, cross country skiing, canoeing, kayaking, hiking, horseback riding, mountain biking, fishing, hunting and other types of recreation services. Without outfitters and guides, or an expensive federal replacement, many of these experiences and much federal land would be inaccessible to the average taxpayer.

We believe the need for outfitters and guides to aid the taxpayers' enjoyment of public lands is well established. The majority of families and individuals seeking backcountry recreation opportunities on federal lands do not possess the first aid training, equipment, or knowledge of low impact techniques important to many recreation activities in backcountry settings. Recreationists may simply not have the time to develop the logistical expertise necessary to operate in the areas. Individuals with special needs also deserve recreation opportunities that are available through outfitters. Additionally, the public may prefer the interpretive or educational component of a trip led by an outfitter or guide.

⁶ Conversation with John Shilling, USDA Forest Service, Washington, D.C. October 20, 1993.

⁷ Catherine Hansen, Holland and Hart, Legal analysis of liability issues in Forest Service special use permit for America Outdoors. Cheyenne, Wyoming: January 1994.

The competitive operating environment, the origination of services from facilities outside federal boundaries, the relatively short term of permits, and the significant levels of investment required for many of these operations, are among the factors that call for a separate, distinct policy for outfitters and guides. We believe this policy is an important component of a rural economic development strategy, especially where federal lands are predominant.

A significant distinction between outfitter and guide services and hospitality concessions exists. This distinction was recently made in S. 208, approved by the Senate Energy and Natural Resources Committee by a vote of 16 to 4.⁸ For hospitality concessions, an exclusive, long term contract for twenty years or more is awarded to one company. Hospitality concessions generally are awarded to a company for services to the public from facilities inside federally managed lands. ✓

On the other hand, services provided to customers by outfitters and guides generally originate from bases or facilities outside federal and public lands and the activities are low impact. Multiple competitors compete for the same market. There is a misconception among some in the federal government that the investment requirements for recreation service providers are quite low. The General Accounting Office has mistakenly informed Congress, "Short term agreements (5 ✓ years or less) are for services requiring little or no investment in facilities."⁹

To the contrary, over time, the investment and financing requirements for many outfitters and guides operating under five year permits have increased significantly. The Nantahala Outdoor Center, for example, has retail facilities, two restaurants, and lodging established to service their customers, who utilize National Forests for recreation. Many outfitters operating on the Colorado

⁸ See exemption language and permitting terms for outfitters in S. 208, op. cit.

⁹ Keith O. Fultz, *Recreation Concessioners Operating On Federal Lands*, published testimony United States General Accounting Office, Environment, Energy, and Natural Resources Subcommittee, Committee on Government Operations, United State House of Representatives, Washington, D.C.: March 21, 1991, p.p. 5.

River through the Grand Canyon have warehouses, kitchens, and office facilities, financed with loans whose terms are for fifteen years. Financial institutions often examine permits to determine their term and whether the business has renewal rights. Eliminating stability by reducing renewal options for permittees who have met the terms of their permit will reduce investment in facilities, diminish service, and damage rural economies.

A permitting policy for outfitters and guides should be more streamlined and less costly to issue and manage than the concessions contracts of the National Park Service, for example. There are an estimated 9,000 permits or concessions agreements¹⁰. To provide an NPS style concessions contract to all these concessions would be too costly. Clearly, some other form of permitting other than NPS type concessions contracts should be implemented for short term concessions and it should be standardized among all agencies.

Goals of a Standardized Permitting Policy for Recreation Service Providers

The goals of a permitting policy for outfitters and guides should be to provide

1. the incentive for investment in the resources necessary to create and sustain successful small businesses capable of meeting the goals set by resource management;
2. a cost-effective method of selecting those individuals and companies with a business ethic that reflects resource stewardship and a commitment to quality service;
3. a fair return to the government for the privilege of operating on public lands;
4. annual performance evaluation criteria, which reasonably assures public health, safety, quality services and environmentally sensitive use of natural resources, and which serves as the basis for permit "renewal";

¹⁰ United States General Accounting Office, Report to the Chairman, Environment, Energy, and Natural Resources Subcommittee, Committee on Government Operations, United States House of Representatives, *Federal Lands: Improvements Needed in Managing Concessioners*, Washington, D.C.: 1991, p.p. 2.

5. the potential for growth of small businesses who contribute to economic development in rural America.

Essential Elements of a Standardized Permitting Policy for Recreation Service Providers

To achieve the goals listed above, several key elements of a permitting policy are required.

1. **Award new permits based on experience, qualifications, and stewardship not fee** ✓

bidding. Agencies should base the award of new permits on proposals for operations that reflect the experience of the permittee, their qualifications, demonstrated business skills, quality service, and commitment to resource protection. Fee bidding for permits subverts stewardship and potentially undermines the quality of service. Regardless of mandates to consider other qualifications, in the era of deficit reduction and high levels of scrutiny, agency personnel will tend to select the highest fee bid at the expense of other qualifications, such as service or stewardship. Variable fee burdens will result among competitors that undermine the ability of some companies to compete on quality and resource stewardship.

For these reasons, fees should be standardized for each type of service within a resource area or unit and should be based on fair market value. These terms are reflected in S. 208.¹¹ Some credit should be given to non-compensated services provided to the government by recreation service providers either as part of the evaluation or in lieu of fees.

2. **Provide renewal rights upon expiration.** If the terms of the permit have been met, the resource protected, and quality service provided to the customer then permittees should be granted rights to renew their permit. Adequate investment in services, the procurement

¹¹ See section on standardization of fees for outfitting and guiding in S. 208, op. cit.

and maintenance of equipment, the training of quality guides and staff, and the marketing of recreation services, requires a planning horizon that extends beyond the expiration of a five year permit. Companies who are in the third or fourth year of a five year permit may need to acquire equipment, improve facilities, and enter into marketing arrangements, whose life naturally extends beyond the expiration of the permit. If however, upon the expiration of the permit renewal is not an option for a satisfactory permittee or if the award of that permit is subject to a bid, those investments will not be made. It is unlikely that any significant investments in quality services or facilities will ever be made for permits with terms of five years that are subject to a bid from competitors regardless of performance by the existing permit holder.

The goal of the policy should be to select individuals or companies with a commitment to quality, stewardship and with the business skills to succeed and to retain those operators as long as they meet the terms of the permit. Turnover for the sake of turnover or a policy intent on providing business opportunities to an unlimited number of entrants will not serve the resource or the public well. A high level of turnover will also result in higher operating overhead for the agencies and a "cash cow" mentality for permittees. The net effect for a permittee operating in this environment will be to transfer cash from their permitted operation to more secure investments. With the decline of investment in resources, training, and facilities, service to the public and resource stewardship will decline.

3. **Adequate evaluation of permittees ensures quality service and resource stewardship.**

Adequate annual evaluation of the permittees' operations will ensure the delivery of quality service. Rights to renew should be based on the permittees' ability to provide

satisfactory service and compliance with other terms of the permit. The policy of retaining renewal rights for permittees who are not probationary for two consecutive evaluation periods or who are not probationary or unsatisfactory in the final year of their permit is an appropriate policy. S. 208 reflects the intent to retain "satisfactory" outfitters.¹²

Improvements should also be made in the administration of this policy by developing a standardized format for permittees' operation plans and well defined evaluations. Operation plans then become part of the permit and compliance with the operation plan is one measure of the permittees' performance in annual evaluations. Practices to minimize impacts and meet other resource management objectives can be specified in the operating plan. Other elements of the evaluation should measure quality service and the ability to meet the financial obligations to the government. Training permit holders and administrators in requirements and responsibilities of the permit are important components of an adequately implemented policy.

The evaluation should not focus on compliance with administrative procedures or deadlines that do not comply with standard business practices. Evaluations should be developed in cooperation with service providers who are experts in their disciplines. The evaluators should be adequately trained in the administration of the policy and the evaluation.

An appeals process should be established that allows for impartial review of appeals of a probationary or unsatisfactory rating. That process should be fair and easily understood by both parties. ✓

¹² See exemption language and permitting terms for outfitters in S. 208, op. cit.

4. Transferability of the permit with the sale of the business. As with any business, the incentive to risk and invest is based partially on the potential to establish and build equity value in the business and property. Many outfitters, for example, work many years at low salaries to establish their businesses. Most do not have retirement plans. Their retirement is based on the ability to sell a successful business. The greater the success the greater is the reward.

A permitting policy should allow the transfer of a permit with the sale of the business to a buyer judged to be qualified by the agency. Agencies should have the authority to deny transfer of the permit if the sale price exceeds a reasonable value and jeopardizes the viability of the business or quality service to the public. Transfers should also be prohibited if the sale price includes any valuation of the permit. Permit administrators should, however, recognize that the value of a business is equal to more than the sum of the value of the assets. The public's demand for the services of an outfitter is based on years of work, ingenuity, quality service, innovation, and technical skill. It is appropriate for the sale price to reflect these values.

5. Permit terms should not create liability exposure to permittees for the inherent risks of the activity. Strict liability clauses in some permits have required outfitters and other permittees to accept liability regardless of negligence or prohibited assumption of risk agreements. These are not appropriate for recreation service permits and will ultimately impair permittees' ability to obtain affordable insurance. Permittees should be responsible for their own negligence, but not for the negligence of the customer or for the inherent risks of the activity, provided that the customer has received reasonable warning about the apparent risks. ✓ 2-27

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 and revised document: F:\DMS\C_HANSEN.DIR\0046036.01A

Deletions appear as struck-through text
 Additions appear as "redlined" text

FS-2700-4 (7/93)
 OMB No. 0596-0082
 Expires: 6/30/96

U.S. DEPARTMENT OF AGRICULTURE Forest Service SPECIAL-USE PERMIT Authority: _____ _____	Holder No. -	Issue Date / /	Expir. Date / /
	Type Site(s)	Authority	Auth. Type
	Region/Forest/District / /		State/County /
	Cong. Dist. --	Latitude -- -- --	Longitude -- -- --

_____ of

 (Holder Name) (Billing Address -1)

 (Billing Address - 2) (City) (State)
 (Zip Code)

(hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the _____ National Forest <<or _____ unit of the National Forest System. OPTIONAL>>

This permit covers <<# OF ACRES>> acres and/or <<# OF MILES OR WIDTH IN FEET X LENGTH IN FEET OF USE AUTHORIZED>> and is described as (e.g. NW1/4 NW1/4, Section 26, T24N, R16E, W.M.; Tract 419-A; MS 309 ID; etc.) as shown on the location map attached to and made a part of this permit, and is issued for the purpose of: _____

The above described or defined area shall be referred to herein as the "permit area".

TERMS AND CONDITIONS

I. AUTHORITY AND GENERAL TERMS OF THE PERMIT

A. Authority. This permit is issued pursuant to the authorities enumerated at Title 36, Code of Federal Regulations, Section 251 Subpart B, as amended. This permit, and the activities or use authorized, shall be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.

B. Authorized Officer. The authorized officer is the Forest Supervisor or a delegated subordinate officer.

C. License. This permit is a license for the use of federally owned land and does not grant any permanent, possessory interest in real property, nor shall this permit constitute a contract for purposes of the contract Disputes Act of 1978 (41 U.S.C. 611). Loss of the privileges granted by this permit by revocation, termination, or suspension is not compensable to the holder.

D. Amendment. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms, conditions, and stipulations as may be required by law, regulation, land management plans, or other management decisions.

E. Existing Rights. This permit is subject to all valid rights and claims of third parties. The United States is not liable to the holder for the exercise of any such right or claim.

F. Nonexclusive Use. Unless expressly provided in additional terms, this permit is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area for any purpose.

G. Public Access and Use. Unless specifically limited under additional terms to this permit, the holder agrees to allow the public free and unrestricted access to and use of the permit area at all times for all lawful purposes. To facilitate public use of the permit area, all existing roads or roads as may be constructed by the holder shall remain open to the public, except for roads as may be closed by joint agreement of the holder and the authorized officer.

H. Forest Service Right of Entry and Inspection. The Forest Service shall have free and unrestricted access at all times, including the right to enter into all buildings, dwellings, and other facilities to ensure compliance with the terms and conditions of this permit. In addition, the Forest Service may enter the authorized facilities for any purpose or reason

consistent with any right or obligation of the United States under any law or regulation.

I. Assignability. This permit is not assignable or transferable. If the holder through death, voluntary sale or transfer, enforcement of contract, foreclosure, or other valid legal proceeding shall cease to be the owner of the improvements, this permit shall terminate.

J. Permit Limitations. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

II. TENURE AND ISSUANCE OF A NEW PERMIT

A. Expiration at the End of the Authorized Period. This permit will expire at midnight on _____. Expiration shall occur by operation of law and shall not require notice, any decision document, or any environmental analysis or other documentation.

B. Construction. Any construction authorized by this permit may commence by _____ and shall be completed by _____. If construction is not completed within the prescribed time, this permit may be revoked or suspended.

C. Minimum Use or Occupancy of the Permit Area. Use or occupancy of the permit area shall be exercised at least _____ days each year, unless otherwise authorized in writing under additional terms of this permit.

D. Notification to Authorized Officer. If the holder desires issuance of a new permit after expiration, the holder shall notify the authorized officer in writing not less than six (6) months prior to the expiration date of this permit.

E. Conditions for Issuance of a New Permit. At the expiration or termination of an existing permit, a new permit may be issued to the holder of the previous permit or to a new holder subject to the following conditions:

1. The authorized use is compatible with the land use allocation in the Forest Land and Resource Management Plan.

2. The permit area is being used for the purposes previously authorized.

3. The permit area is being operated and maintained in accordance with the provisions of the permit.

4. The holder has shown previous good faith compliance with the terms and conditions of all prior or other existing permits, and has not engaged in any activity or transaction contrary to Federal contracts, permits, laws, or regulation.

F. Discretion of Forest Service. Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued. The decision whether to issue a new permit to a holder or successor in interest is at the absolute discretion of the Forest Service.

III. RESPONSIBILITIES OF THE HOLDER

A. Plans. If required by the authorized officer, all plans for development, layout, construction, reconstruction, or alteration of improvements on the permit area, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect. Such plans must be approved in writing by the authorized officer or a designated representative before the commencement of any work. A holder may be required to furnish as-built plans, maps, or surveys, or other similar information, upon completion of construction.

B. Maintenance. The holder shall maintain the improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer, and consistent with applicable Federal, State, and local health and safety and other requirements.

C. Hazard Analysis. The holder has a continuing responsibility to identify and ~~abate~~ mitigate hazardous conditions on the permit area which could affect the improvements or pose a risk of injury to individuals. ~~Any actions to abate such hazards shall be performed after consultation with the authorized officer. the holder, its employees, clients, customers, guests and invitees.~~

D. Compliance with Laws, Regulations, and other Legal Requirements. The holder, in exercising the uses authorized by this permit, will assume responsibility for compliance with the regulations of the Department of Agriculture and all Federal, State, county and municipal laws, ordinance, or regulations which are applicable to the area or holder's operations covered by this permit. The obligations of the holder under this permit are not contingent upon any duty of the Forest Service to inspect the premises. A failure by the Forest Service, or other governmental officials, to inspect is not a defense to noncompliance with any of the terms and conditions of this permit.

E. Fire Prevention and Suppression. The holder shall take all reasonable precautions to prevent and suppress forest fires. Open fires are prohibited except with written permit from the authorized officer or the authorized officer's agent.

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eliminating*

F. Change of Address. The holder shall immediately notify the authorized officer of a change in address.

G. Change in Ownership of the Authorized Improvements. This permit is not assignable and terminates upon change of ownership of the improvements. The holder shall immediately notify the authorized officer when a change in ownership is pending. Notification by the present holder and potential owner shall be executed using Form FS-2700-3, Special Use Application and Report, or Form FS-2700-3a, Request for Termination of and Application for Special-Use Permit. Upon receipt of the proper documentation, the authorized officer may issue a permit to the new owner of the improvements.

IV. LIABILITY

For purposes of this section, "holder" includes the holder's heirs, assigns, agents, employees, and contractors, clients, customers, guests and invitees.

K.A. assigned to cover loss to personal property

A. Risk of Loss. The holder assumes all risk of loss of the property. ~~Loss to the property to holder's personal property,~~ buildings or improvements except for loss resulting from the acts, omissions or negligence of the United States, its assigns, agents, employees or contractors. Loss to holder's personal property, buildings or improvements may result from, but is not limited to, theft, vandalism, fire, avalanches, rising waters, winds, falling limbs or trees, and acts of God. If the authorized buildings or improvements are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the buildings or improvements can be safely occupied in the future and whether rebuilding should be allowed.

B. Damage to Property of the United States. The holder has an affirmative duty to protect from injury and damage the land, property, and other interest of the United States that might result from its operations under this permit. Damage includes, but is not limited to, fire suppression costs and all costs and damages associated with or resulting from the release or threatened release of a hazardous substance occurring during or as a result of the holder's activities on, or related to, the lands, property, and other interests covered by the permit, during the term of the permit.

1. The holder shall ~~compensate in full indemnify the United States for damages occurring under the terms of this permit or under any law or regulation applicable to the National Forests. The holder shall be liable for all injury, loss, or damage all costs or expenses associated with any injury, loss or damage to person or property, including fire suppression, or other costs associated with rehabilitation or restoration of natural resources, associated with the holder's use or occupancy. Compensation arising out of holder's operations under this~~

permit. Such indemnification shall include, but is not limited to, the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney fees), and other costs in connection therewith. Holder's indemnification shall not extend to injury, loss or damage resulting from the acts, omissions or negligence of third parties, or, the United States, its assigns, agents, employees or contractors.

2. ~~With respect to roads,~~ the The holder shall be liable indemnify the United States for damages to all roads and trails of the United States open to public use ~~caused by the arising out of holder's use operations under this permit~~ to the same extent as provided under paragraph IV (B)(1), except that liability shall not include reasonable and ordinary wear and tear.

3. ~~In addition to liability provided in this paragraph, the holder may incur strict liability for certain high hazard situations if so provided by additional clauses appended to this permit.~~

C. Indemnification and Liability of the United States. The holder shall comply with all applicable federal, state, and local laws and regulations, including but not limited to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Oil Pollution Act, 33 U.S.C. 2701 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S.C. 9601 et seq., as subsequently amended. The holder shall indemnify, defend, and hold the United States harmless for any holder's violations incurred under any such of the above or any applicable laws and regulations ~~or, and for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use and/or occupancy authorized by~~ incurred as a result of holder's violations of any such laws and regulations arising out of holder's acts or omissions associated with its operations under this permit, during the term of this permit.

~~This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the holder in connection with the use and/or occupancy authorized by this permit which result in: (1) violations of the above or any applicable laws and regulations; (2) judgments, claims, or demands assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) other releases or threatened releases on or into land, property, and other interest of the United States by solid waste and/or hazardous substance(s).~~

~~The holder's indemnification of the United States shall also include any damage to life or property arising from the holder's occupancy or use of land, property, and other interest of the United States.~~

The United States has no duty to inspect permit area or to warn of hazards and, if the United States does inspect the permit area, it shall incur no additional duty nor liability for identified or non-identified hazards. This ~~covenant~~ indemnification may be enforced by the United States in a court of competent jurisdiction.

D. This permit does not prohibit holder from entering into any release, indemnification or acknowledgement of risk agreement(s) with its clients, customers, guests or invitees.

V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination," "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms, or for reasons in the public interest. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulations.

2. Noncompliance with the terms and conditions of this permit.

3. Reasons in the public interest.

4. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to Section V (B), the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

D. Removal of Improvements. Upon abandonment, revocation, termination, or expiration of this authorization, the holder shall remove within a reasonable time prescribed by the authorized officer all structures and improvements, except those owned by the United States, and shall restore the site. If the holder fails to remove all structures or improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

VI. FEES

A. Termination for Nonpayment. This permit shall automatically terminate without the necessity of prior notice when land use rental fees are 90 calendar days from the due date in arrears.

B. The holder shall pay an annual fee of _____ Dollars (\$_____ for the period from _____, 19__, to _____, 19__, and thereafter annually on _____, _____ Dollars (\$_____ : **Provided**, charges for this use shall be made or readjusted whenever necessary to place the charges on a basis commensurate with the fair market value of the authorized use.

B. The holder shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use granted by this authorization. The initial payment is set at \$_____ for the remainder of the calendar year. Subsequent payments shall be determined by the use of an annual fee schedule. The Forest Service may adjust the amount of payment annually by an appropriate indexing factor to reflect more nearly the fair market value of the use. At certain intervals the Forest Service shall review the fee and adjust the fee as necessary to assure that it is commensurate with the fair market value of the authorized rights and privileges, as determined by appraisal or other sound business management principles.

B. The holder shall pay in advance a sum determined by the Forest Service to be the fair market value of the use granted by this authorization for a _____ year period. The payment is set at \$_____ for the initial _____ year period. Payments for each subsequent _____ year period shall be the amount of the payment for the initial period, adjusted using an appropriate indexing factor to reflect more nearly the current fair market value of the use at the beginning of the new period. At certain intervals the Forest Service shall review the fee and adjust the

fee as necessary to assure that it is commensurate with the fair market value of the authorized rights and privileges, as determined by appraisal or other sound business management principles.

C. Payment Due Date. The payment due date shall be the close of business on (due date) of each calendar year payment is due. Payments due the United State for this use shall be deposited at (insert address) in the form of a check, draft, or money order payable to "Forest Service, USDA." Payments shall be credited on the date received by the designated Forest Service collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non workday, the charges shall not apply until the close of business on the next workday.

D. Late Payment Interest. Pursuant to the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3101, et seq., and regulations at 7 CFR Part 3, Subpart B, an interest charge shall be assessed on any payment or financial statement not received by the due date. Interest shall be assessed using the most current rate prescribed by the due date. Interest shall be assessed using the most current rate prescribed by the United States Department of Treasury's Fiscal Requirements Manual (TFRM-6-8020.20). Interest shall accrue from the date the payment or financial statement was due. In the event that two or more billings are required for delinquent accounts, administrative costs to cover processing and handling of the delinquent debt will be assessed.

E. Additional Penalties. In the event of permit termination pursuant to provisions VI (A), and prior to the issuance of a new permit, a penalty of 6 percent per year shall be assessed on any fee amount overdue in excess of 90 days from the payment due date. This penalty shall accrue from the due date of the first billing or the date the fee calculation financial statement was due. The penalty is in addition to interest and any other charges specified in the above paragraph.

F. Disputed Fees. Disputed fees are due and payable by the due date. No appeal of fees will be considered by the Forest Service without full payment of the disputed amount. Adjustments, if necessary, will be made in accordance with settlement terms or appeal decision.

G. Delinquent Fees.

1. Delinquent fees and other charges shall be subject to all rights and remedies afforded the United States pursuant to Federal law and implementing regulations (31 U.S.C. 3711 et seq.).

2. The authorized officer shall require payment of fees owed the United States under any Forest Service authorization before issuance of a new permit.

VII. OTHER PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. Appeals and Remedies. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

C. Removal and Planting of Vegetation. This permit does not authorize the cutting of timber or other vegetation. Trees or shrubbery may be removed or destroyed only after the authorized office, or authorized officer's agent, has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed shall be paid for by the holder as follows: Merchantable timber at appraisee value and young-growth timber below merchantable size at current damage appraisal value, provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the holder at no stumpage cost to the holder. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the authorized officer.

D. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

Public reporting burden for collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0596-0082), Washington, DC 20503.

SUPPLEMENTAL MANDATORY CLAUSES FOR OUTFITTERS AND GUIDE SERVICES

PER FOREST SERVICE HANDBOOK

A7. Access to Records

For the purpose of administering this permit (including ascertaining that fees paid were correct and evaluating the propriety of the fee base), the holder agrees to make all of the accounting books and supporting records to the business activities, as well as those of sub-lessees operating within the authority of this permit, available for analysis by qualified representatives of the Forest Service or other Federal agencies authorized to review the Forest Service activities. Review of accounting books and supporting records will be made at dates convenient to the holder and reviewers. Financial information so obtained will be treated as confidential as provided in regulations issued by the Secretary of Agriculture (36 CFR 200.6(f)).

The holder will retain the above records and keep them available for review for 5 years after the end of the year involved, unless disposition is otherwise authorized by the Forest Service in writing.

B2. Nondiscrimination, Services. This is a general clause for use in all concession permits.

During the performance of this authorization, the holder agrees that:

1. The holder and employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, or national origin by curtailing or refusing to furnish accommodations.
2. Title VI attaches coverage to the holder's employment practices if discrimination in employment impeded the delivery of services and benefits to people on the basis of their race, color, or national origin.
3. The holder shall include and require compliance with this nondiscrimination provision in any subcontract made with respect to the operations under this authorization.
4. Signs setting forth this policy of nondiscrimination, to be furnished by the Forest Service, will conspicuously be displayed at the public entrance to the premises, and at other exterior or interior locations as directed by the Forest Service.

B10. Insurance Clause. Include this clause in all permits where public liability might exist. If there is any doubt about the meaning of the language in a policy, refer it to the Regional Attorney.

For special-use permits to the Boy Scouts of America (BSA) which may include this insurance requirement, delete the final two sentences of this clause. Copy of BSA master policy is in FSM 1566.11a.

The holder shall have in force comprehensive general public liability insurance covering: (1) property damage in the amount of _____ dollars (\$_____), and (2) damage to persons in the minimum amount of _____ dollars (\$_____) in the event of death or injury to one individual, and the minimum amount of _____ dollars (\$_____) in the event of death or injury to more than one individual. The coverage shall extend to property damage, bodily injury, or death ~~rising~~ arising out of the holder's activities operations under the this permit including, but not limited to, the occupancy or use of the land and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by this permit. Such insurance shall also name the United State as ~~a co-~~ an additional insured and provide for specific coverage of the holder's contractually assumed obligation to indemnify the United States pursuant to paragraphs IV. A, IV. B.1 and IV. B.2 herein, to the extent that coverage is provided for the holder. The holder shall send an authenticated copy of its insurance policy to the Forest Service immediately upon issuance of the policy. The policy shall also contain a specific provision or rider to the effect that the policy will not be cancelled or its provisions changed or deleted before thirty (30) days written notice to the Forest Supervisor, _____ (Address) _____, by the insurance company.

Rider Clause (for insurance companies)

It is understood and agreed that the coverage provided under this policy will not be cancelled or its provisions changed or deleted before thirty (30) days of receipt of written notice to the Forest Supervisor, _____ (Address) _____, from the insurance company.

X22. Regulating Services and Rates

The Forest Service shall have the authority to check and regulate the adequacy and type of services provided the public and to require that such services conform to satisfactory standards. The holder may be required to furnish a schedule of prices for sales and services authorized by the permit. Such prices and services maybe regulated by the Forest Service: Provided, that he holder shall not be required to charge prices lower than those charged by comparable or competing.

X30. Advertising

The holder, in his advertisements, signs, circulars, brochures, letterheads, and like materials, as well as orally, shall not misrepresent in any way. either the accommodations provided, the status of the permit, or the area covered by it or tributary thereto.

The fact that the permitted area is located on the _____ National Forest shall be made apparent in all the holder's brochures and advertising regarding use and management of the area and facilities under permit.

43X. Notification of Sale and Transfer of Ownership of Improvements. This clause is mandatory for all commercial recreation special-use permits.

The holder is not required to obtain the consent of the Forest Service to the sale of permitted improvements. However, the holder shall immediately notify the Forest Supervisor when a sale and transfer in ownership of the permitted improvements is planned. There is no obligation on the part of the Forest Service to issue a special-use authorization to the person(s) acquiring the improvements.

ADDITIONAL OPTIONAL CLAUSE THAT HAS BEEN USED IN PERMIT FOR OUTFITTERS AND GUIDE SERVICES [INCLUDED IN FOREST SERVICE HANDBOOK]

~~B7. Liability. Delete the fire damage or high-hazard clause printed on permit and term permit forms which begin, "... The holder shall exercise diligence ..." or "... The holder shall pay ..." and substitute the following:~~

~~The holder shall be liable for all injury, loss, or damage, indirectly or directly resulting from or caused by the holder's use and occupancy of the area covered by this authorization, regardless of whether the holder is negligent, provided that the maximum liability without fault shall not exceed \$1,000,000 for any one occurrence. Payment of damages for occurrence where there is liability without fault (strict liability) does not limit the holder's liability for damages in excess of \$1 million where actual negligence is shown or imputed. Liability for injury, loss, or damage in excess of the specified maximum, shall be determined by the laws governing ordinary negligence.~~

~~B8. Indemnification of United States.~~

~~The holder shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of National Forest lands under this permit.~~

This permit is accepted subject to the conditions set out above.

HOLDER NAME: _____

U.S. DEPARTMENT OF
AGRICULTURE
Forest Service

By: _____

By: _____

(Holder Signature)
Signature)

(Authorized Officer

(Holder Signature)

(Title)

Date: _____

Date: _____

This permit is accepted subject to the conditions set out above.

Date _____

*CORPORATE NAME

(CORPORATE SEAL)

By _____
(Vice) President

ATTEST:

(Assistant) Secretary

The following certificate shall be executed by the Secretary or Assistant Secretary of the Corporation:

I, _____, certify that I am the

Secretary of the Corporation that
executed the above permit; that _____,
who signed said permit on behalf of said Corporation; that I
know his/her signature, and that his/her signature on said
permit is genuine; and that said permit was duly signed,
sealed, and attested to for and on behalf of said
Corporation by authority of its governing body.

(CORPORATE SEAL)

(Assistant) Secretary

U.S. DEPARTMENT OF AGRICULTURE
Forest Service

By _____
(Authorized Officer Signature)

(Title)

(Date)

COMMENTS ON PROPOSED CHANGES:

1. Section III C.: "Abate" means "put an end to;" "mitigate means "lessen." Holder cannot possibly put an end to all potential hazards, including inherent risks. In addition, this is a non-exclusive permit. Holder cannot be responsible or liable to third parties it is unaware of.

Delete last sentence: In example posed above, holder cannot practically contact an "authorized officer" prior to determining how to handle potential avalanche danger when officer is not present and/or not within radio contact.

2. Section III D.: Narrow to holder's operations under permit. In this way, holder assumes responsibility for complying with laws and regulations directly connected with his operations under the terms of the permit.

3. Section IV introduction: Expand definition of holder.

4. Section IV. A.: The purpose of this section is to require holder to be responsible for loss to ITS own property and improvements. This is clarified, and language added to clarify holder is not responsible for loss to property resulting from acts, omissions or negligence of United States.

5. Section IV. B: This section and its subparts deals with holder's responsibilities to the United States. This section is specifically defined to limit holder's responsibilities for damages to those damages arising in direct connection with holder's operations under the permit. This section also limits the responsibility to the "term of the permit."

6. Section IV. B. 1.: This has been changed to "indemnification" to better track with holder's contractual liability coverage in a general insurance policy. The first sentence of this section is unnecessary and was therefore deleted. No need to say holder will "be liable" versus will "indemnify." Effectively gives same result to United States, but keeps language potentially implying "fault" out of the picture. In addition, language added at end to clarify that Holder is not required to indemnify United States for damage resulting from acts of third parties, including acts of the United States.

7. Section IV. B. 2.: This has been altered to track with Section IV. B. 1., above.

8. Section IV. B. 3: This section was deleted. The section is vague, overbroad and gratuitous. If additional clauses are added, let those clause reflect any additional

duties. In addition, there is no need to presume the legal standard of care to be applied.

9. Section IV. C.: This section is altered to better define holder's indemnification connected with applicable laws and regulations. Holder is responsible for indemnifying the United States for damages, expenses, etc. resulting from his operations [his conduct] under the permit. To track standard insurance policies, the indemnification is limited to damages incurred during the term of the permit. "Including but not limited to" language is taken out, and sections (2) - (4) are deleted as these are already addressed and taken care of in Section IV, above.

10. Section IV. D.: This section is added to clarify that providers should be allowed to pass on liability to the extent allowed by state law. Consistent with Forest Service lack of written policy on this issue. [Also prevents problems encountered in recent Anderson v. Eby case (998 F.2d 858, 865 (10th Cir. 1993.))]

11. Section VII. D.: What is the purpose of the paragraph discussing "public reporting burden?"

12. Supplemental mandatory paragraph B10: This section has been changed to better define coverage as "comprehensive general public liability insurance" and to define the United States accurately as an "additional" versus "co" insured. In addition, the United States is covered specifically in regard to holder's contractually assumed obligations as laid out in IV A, B1 and B2. Paragraph IV.C. (pollution, hazardous waste violations) is not included as these are uninsurable. [Forest Service should note that with the typical outfitter/guide operations, hazardous waste violations will not even come into play anyway.] This change was made to accurately define coverage and to allow for insurance companies to sign certificate of insurance.

13. Supplemental Paragraphs B7 and B8: These paragraphs are not mandatory for outfitters and guides but have shown up in some outfitter/guide permits. These clauses are general supplemental clauses included in the Forest Service handbook. We have deleted both paragraphs, primarily because they completely negate the liability and indemnification provisions, as edited, contained in Section IV above. Paragraph B7 is a guarantee of safety-- an insurance policy for everything. The holder cannot and should not have unlimited liability. Similarly, the indemnification is a blanket indemnification, completely contrary to the indemnification language contained in Section IV, above. We would recommend that the Forest Service delete these out of their handbook, to prevent their arbitrary use in other outfitter/guide permits.

2713 - PERMIT PREPARATION

2713.3 - Special Conditions

2713.32 - Liability and Insurance Coverage. Where insurance is required, the amounts will not be less than \$50,000 property damage and \$300,000 for personal injury to one or more persons (combined single limit).

See FSM 2713.32a for criteria applicable to waivers by Forest Supervisors.

Forest Supervisors may require higher coverage when deemed necessary.

Many states now recognize the use of liability releases as a part of the client contract for outdoor recreation activities. Subsequently, many outfitters, guides, event sponsors and ski areas now require clients to sign such a "release" (exculpatory agreement) in order to participate in the activity. Ski areas do not require a signature. It is implicit in purchase and use of the ski-lift ticket. Some insurance companies require use of such documents as an integral part of the coverage.

* [It is the policy of Region 2 to allow the recreation service industry to apply whatever legal means available to better manage risk and reduce sometimes frivolous claims or lawsuits. Therefore, special use administrators and line officers in this Region will not in any manner prohibit or limit the use of such waivers. When used, administrators should recommend that the U.S. Government (USDA Forest Service) be named in the document as well as the permittee.

Clause B-10 (Insurance Coverage) from FSH 2709.11 is not mandatory in Recreation Event (Use Code 311) or Special Event (Use Code 311) Special Use Authorizations unless they are held primarily to generate profit and entail admission fees for spectators and/or commercial vendors providing goods, services, and food (except coincidental sale of T-shirts, hats, etc.).

Public liability insurance is therefore not required for holders of authorizations issued under the above referenced codes unless they are clearly commercial in nature. When such insurance is required, coverage for participants in the event is not mandatory. Coverage would be required for spectators.

2713.34 - Performance Bonds. A bond will usually be required in special-use permits or easement stipulations when the use is of such a nature that National Forest lands may require restoration in the event construction is not completed and/or the permit is abandoned or revoked. A bond should not be required when there is little probability that site restoration and cleanup will be needed. Likewise, bonds should not be required of Federal Government agencies, and need not be required of permittees with assured financial ability and tenure, such as a public utility.

Normally bonds are only for restorative measures. When deemed administratively desirable, bonds may be required for specific phases of construction, periods of maintenance or specific jobs. In each case the bond clause must clearly state the exact items bonded.

FOREST SERVICE MANUAL
Denver, CO

TITLE 2700 - SPECIAL USES MANAGEMENT

R2 Supplement No. 2700-93-12

Effective November 15, 1993

POSTING NOTICE. Supplements to this title are numbered consecutively. Post by document name. Remove entire document and replace with this supplement. Retain this transmittal as the first page of this document. The last supplement to this Title was Supplement 2700-93-11 to 2790.

<u>Document Name</u>	<u>Superseded</u>	<u>New</u>
	<u>(Number of Pages)</u>	
2713-2714	3	3

Digest: 2713.32 - Adds Regional policy endorsing and accepting permittee's use of release of liability language in contracts, event applications, and ski lift tickets.

ELIZABETH ESTILL
Regional Forester

----- COMPARISON OF FOOTERS -----

-FOOTER 1-
334794.

334794.

The United States has no duty to inspect permit area or to warn of hazards and, if the United States does inspect the permit area, it shall incur no additional duty nor liability for identified or non-identified hazards. This ~~covenant~~ indemnification may be enforced by the United States in a court of competent jurisdiction.

D. This permit does not prohibit holder from entering into any release, indemnification or acknowledgement of risk agreement(s) with its clients, customers, guests or invitees.

V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination," "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms, or for reasons in the public interest. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulations.
2. Noncompliance with the terms and conditions of this permit.
3. Reasons in the public interest.
4. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to Section V (B), the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.