

Forest Service Reversal of Policy Puts Recreation Investments in Jeopardy

The Forest Service has recently decided to abandon a policy of reauthorizing existing recreation special use permits where the permit holder has been performing well, and instead – is putting them out to bid. The Term Permit Act of 1915 was designed specifically to encourage private investment in recreation facilities and improvements that serve the public. Instead, the agency is now soliciting the highest bid for recreational permits consisting of private sector investments when the permit is up for reauthorization if anyone else expresses an interest in taking over the operations. Permittees are now at risk of losing their entire investment. This new policy will have the effect of restricting any further private investment into these structures and equipment with the ultimate loser being the American public. The incentive to reinvest in the upkeep, maintenance and improvements to resorts, marinas, youth camps, ski areas and other recreation facilities will be eliminated.

Cal Joyner, Regional Forester for the Southwest Region of the Forest Service, recently made this decision which has been supported by the Chief's office. Mr. Joyner's decision directly contradicts a prior assurance given by Forest Service Deputy Chief Leslie Weldon to the permittee and to the National Forest Recreation Association that this outcome would not occur. While Mr. Joyner was focused at the time solely on a specific permit in his region (Sabino Canyon Tours), his decision will now set a national precedent, which will threaten all Term Permit holders of operations such as: resorts, marinas, youth camps, and ski areas. It will also open the door to small family owned operators being outbid and driven out by larger corporations and government agencies.

The reason given by Regional Forester Joyner for proceeding with a bidding process, rather than honoring its commitment to Sabino Canyon Tours, was that it was required to do so pursuant to Cost Recovery regulations. These are regulations setting out the requirements to assess fees for processing special use applications. "A processing fee is required for each application for or agency action to issue a special use authorization..." The regulations apply to "applications for use and occupancy that require a new special use authorization." The agency asserts that the issuance of the special use authorization to continue shuttle services (at Sabino Canyon Tours) after June of 2018 is a "new" special use authorization falling under this regulation. The agency never once cited to this regulation as applying when it previously reissued special use authorizations to Sabino Canyon Tours in 2007, 2008, 2009 and 2015. The agency has now taken a position that directly contradicts its consistent position over the past 12 years of permit renewals but offers no basis for this reversal of its past policy.

The agency stated some companies "expressed interest" in taking over the shuttle operations which then triggered the applicability of § 251.58(c)(3)(ii). Forest Service Manual 2343.03, paragraph 2 directs it to issue a prospectus for "new concession sites" - **not** existing sites. The manual direction does not direct the agency to issue a prospectus for an existing concession operation with privately owned facilities and improvements when a third party expresses an interest in taking over that operation. This new interpretation is a dramatic and unprecedented change in the agency's longstanding policy and conduct.

The agency claims that Forest Service Manual 2712.1 requires it to issue a prospectus. This policy explicitly refers to those recreational opportunities which arise for the first time as part of the planning process. This language, as well as the agency's implementation for the past 102 years of the Term Permit Act, indicates this directive applies to new opportunities not yet in existence, and not for recreation permits that are – and have been – in place for decades.

The National Forest Recreation Association is requesting the Forest Service adhere to the policy and practices of re-issuing Term Special Use Permits that have been the standard for the lifespan and history of all of the existing permits.

Summary of Concerns

1. The Forest Service interpretation of the law and agency directives is not consistent with past protocol regarding similarly situated special use permit holders and specifically contradicts the purpose of the Term Permit Act. As a result, the Forest Service interpretation of these authorities will negatively impact the ability of permit holders to continue making the investments necessary to provide high quality recreational services and facilities.
2. The significant investments of private capital that will be forfeited by the permittee is of critical interest to every Special Use Permit holder in the country.
3. Forest Service staff has admitted that Mr. Ricketts was not able to make desired changes due to the agency not issuing him a long-term permit or informing him of what specific changes were being requested. No negotiations were held on these issues, even though the renewal permit clause provides the opportunity for the line officer to prescribe new requirements for services.
4. This decision will open the door to a serious loss of investment in the recreation facilities. These small family-owned businesses will be unable to recover the full value of their improvements because they would be forced to sell to the successful bidder at whatever rate they were offered, or they would have to bear the costs of removal.