

COALITION FOR OUTDOOR ACCESS

COMMENTS

on

U.S. Department of the Interior Secretarial Order 3366, issued on April 18, 2018

June 29, 2018

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Dear Mr. Ratcliffe and Mr. Ridenhour,

The Coalition for Outdoor Access respectfully submits these comments on Secretarial Order 3366 (the "Order"), issued by the U.S. Department of the Interior (the "Department") on April 18, 2018.

The Coalition for Outdoor Access (COA) is an alliance of organizations with an interest in the outfitter-guide permitting systems of the federal land management agencies. COA came together in 2014 to improve these systems for the benefit of the agencies, the recreational landscapes they support, the organizations that provide facilitated recreational experiences on federal lands and waters, and for members of the public who use these services. COA is made up of organizations that represent for-profit outfitters and guides, non-profit outfitters and guides, university recreation programs, volunteer-based clubs, the outdoor industry, and the conservation advocacy community.

The Coalition for Outdoor Access applauds the U.S. Department of the Interior's interest in promoting recreational access to lands and waters managed by the Department. To support the Department's formulation of directives under the Order, we offer the following comments on section 4(a)(1) and section 4(a)(2) related to increasing recreational opportunities and improving the permitting process for outfitters and guides and other facilitated outdoor recreation providers.

Facilitated Outdoor Recreation Providers

As the public's interest in outdoor recreation has grown, and how they access the outdoors has changed, so too has the diversity of groups providing organized outdoor experiences for the public on public lands. These groups include traditional outfitters and guides as well as non-profit organizations such as youth groups, educational institutions, veteran groups, and organizations

with religious affiliations. Based on the collection of fees, compensation of trip leaders, or as a result of being an organized group, these organizations are generally required to obtain a permit or use authorization to conduct their activities. Due to this shared requirement, it has become practical to identify all for-profit businesses, non-profit organizations, and other organized groups who provide facilitated outdoor recreation experiences as “facilitated outdoor recreation providers.”

The Order uses the phrase "guides and outfitters and facilitated outdoor recreation providers." We greatly appreciate the Department’s recognition of facilitated outdoor recreation providers in the Order. At the same time, we encourage the Department to avoid creating a distinction between different types of facilitated outdoor recreation providers. All types of providers are valuable in helping people access public lands. We recommend using the stand-alone term “facilitated outdoor recreation provider” when referring to businesses, non-profit organizations, and groups that provide facilitated outdoor recreation experiences in order to encompass all of these groups, including outfitters and guides. This will serve to improve communication, simplify language, and create equity across providers.

Increasing and Expanding Recreational Opportunities

Increasing and expanding recreational opportunities on Department lands and waters will have numerous benefits for visitors and the Department. More Americans will gain access to the outdoors, create lasting memories, and share in the legacy of America’s public lands system. Increased recreation will also support jobs in the fast-growing outdoor recreation economy and boost the economies of rural gateway communities. We offer the following recommendations to support the Department’s goal of increasing and expanding recreational opportunities:

1. *Encourage additional permitting of facilitated outdoor recreation providers.* As stated in the Order, “The purpose of this order is to ensure public lands and waters under the management and administration of the U.S. Department of the Interior are open and accessible for recreational pursuits by *all Americans and visitors to the United States.*” Facilitated outdoor recreation providers fulfill this purpose of the Order by providing recreational opportunities for many Americans (and visitors to the United States) who might not have the knowledge, skill, specialized equipment, or transportation to experience Department lands and waters on their own, or who simply want to share outdoor experiences with others. This is particularly important as an increasing portion of the population lives in urban areas with little connection to public lands and the outdoors. Moreover, facilitated outdoor recreation providers are a primary facilitator of recreational opportunities for youth, veterans, and minority groups. By increasing the amount of recreational opportunities available through outdoor recreation providers, the Department will expand recreational opportunities for all Americans and improve access for underserved populations.

2. *Expand facilitated outdoor recreation opportunities through improved management strategies.*

We understand limits are placed on the amount of use available to outdoor recreation service providers as a means of ensuring resource protection, preservation of wilderness character, and other management goals. We support these objectives as it is essential to preserve the natural and scenic qualities of our nation's recreation landscapes to ensure they remain attractive for generations to come. However, we believe management strategies can be improved to increase recreational opportunities for the public while simultaneously achieving (or improving upon) management goals. We recommend the Department consider the following strategies:

- Encourage additional use by facilitated groups during off-peak times – The amount of use available to facilitated outdoor recreation providers is often allocated in a lump sum of “service days” or “user days” that can be applied to specific locations throughout a season. This approach unnecessarily limits outdoor recreation providers and often fails to uphold the management goals it is intended to serve because it does not account for natural variations in visitation levels that occur *within* a season. For example, visitor use studies consistently identify that visitation grows on weekends, especially holiday weekends, and diminishes during the mid-week. In a similar fashion, visitation levels drop dramatically during off-peak seasons. We recommend the Department agencies provide more service days for facilitated outdoor recreation providers during periods of lower visitation, such as mid-week and other off-peak times. This will increase recreation opportunities for the public without negatively impacting periods of peak visitation and overcrowding.
- Encourage additional use by facilitated groups in less-visited locations – Similar in intent to the aforementioned strategy, allowing additional use by facilitated groups in locations that see fewer visitors will increase recreation opportunities and direct use into areas of greater visitor capacity.

3. *Lift unnecessary closures and moratoriums on recreation access.* Often times, recreational use of Department lands and waters, especially use by facilitated groups, is restricted because the agencies do not have sufficient staff capacity to manage the use. Consequently, access to recreational areas may be closed or restricted when instead it could be managed to allow access. The U.S. Forest Service has recently taken steps to address concerns such as these. In 2016, the Chief of the Forest Service issued guidance to remove moratoriums on recreation outfitter and guide permitting. As a result, recreational opportunities have been expanded for the public, management strategies have been improved, and new jobs have been created. The Forest Service is continuing to implement this guidance to improve their special use permitting system. We recommend the U.S. Department of the Interior agencies implement similar directives for Department lands and waters.

Improving the Permitting Process for Facilitated Outdoor Recreation Providers

We strongly support efforts to improve the permitting process for facilitated outdoor recreation providers on Department lands and waters. This process has historically been difficult to navigate for outdoor leaders who want to take people out on public lands. Improving the permitting system for these businesses and organizations will improve recreational opportunities for all Americans as well as generate health benefits for veterans, increase physical activity for children, and enable historically underserved populations to develop a valuable connection to America's public lands and waters. We offer the following recommendations to streamline the permitting process:

1. *Encourage cross-jurisdictional permitting.* The Service First Authority (43 U.S.C. § 1703) grants the Secretaries of Interior and Agriculture the ability to issue permits either jointly or on behalf of one another. By issuing one permit for trips that cross multiple jurisdictions, the workload is substantially reduced for the participating agencies and the facilitated outdoor recreation provider benefits from a simplified process with a single application and fee. Currently, this authority may be underutilized. Encouraging cross-jurisdictional permitting between DOI agencies and with USFS will improve efficiency within the agencies and enable facilitated outdoor recreation providers to better serve the public.

2. *Enhance the NPS Commercial Use Authorization website with an online application & reporting system.* The National Park Service (NPS) CUA website provides helpful information about Commercial Use Authorizations in general, the application process, and submission requirements. The interactive map that directs the user to CUA information for specific parks is particularly useful. To enhance the value of the CUA website, we recommend including an online portal that would allow a user to complete an application form, pay the application fee, and submit monthly or annual report forms. This would help to modernize and streamline the permitting process for both agency staff and permittees.

3. *Improve access to information about the NPS Special Park Use Permit (SUP) process.* There are a variety of non-profit organizations, membership groups, and other non-commercial outdoor recreation providers that often face inconsistencies from park to park when applying for permits for facilitated outdoor recreation access. A non-profit organization may be expected to obtain a Commercial Use Authorization at one site, and a Special Use Permit in another. To clarify when SUPs or CUAs should be issued for non-profits, we recommend NPS create a centralized website for information on SUPs. Similar to the CUA website, a centralized SUP website could contain information on the availability of permits, the application process and requirements, and could include an online application and renewal system. These steps would improve communication and streamline the permitting process for nonprofit organizations and the agency.

4. *Standardize the NPS CUA fee administration method.* Current fee administration for recreation CUAs is highly variable across park units. Some parks utilize the cost recovery method and others

utilize the market price method. We recognize the costs to administer CUAs may vary from park to park. We also recognize NPS is required to recover costs associated with the management and administration of CUAs. However, the current variability in CUA fee administration from park to park is unnecessarily complex. We recommend NPS standardize the market price fee administration method across all park units. This method has clear guidance in NPS Reference Manual 48B and it provides equity among different types of facilitated outdoor recreation providers by assessing fees based upon a percentage of gross revenue. In some cases, it may also enable parks to generate additional revenue.

5. *Clarify authorities for the allocation of CUA commercial service days.* Clarification is needed on the authorities available to superintendents when allocating CUA commercial service days (CSDs). For example, do superintendents have the authority to issue varying numbers of CSDs to CUA holders or must CSDs be divided equally among CUA holders? This becomes important when the number of CUAs is limited and applicants have varying levels of business interest. As an example, a business in a gateway community adjacent to a National Park may utilize a larger allocation of CSDs than a non-local business seeking to conduct a single trip. If a superintendent has the authority to issue varying numbers of CSDs in circumstances such as these, it will maximize the use of available CSDs and support a diversity of business models in the park.

6. *Complete NPS Director's Order 48B.* To provide additional guidance on Commercial Use Authorizations, we recommend NPS complete Director's Order 48B *Commercial Use Authorizations* and associated Reference Manual 48B. This will provide valuable direction as the use of CUAs increases across the National Park System.

7. *Allow release of liability forms (NPS).* Currently, holders of Commercial Use Authorizations in the National Park Service are prohibited from using exculpatory agreements with their customers. This increases liability for CUA holders, causing them to assume higher insurance premiums and greater risk. We recommend NPS allow the use of exculpatory agreements. They are recognized and accepted by the courts of most states and widely used across the outdoor recreation industry. The BLM and U.S. Forest Service both allow the use of exculpatory agreements. NPS should do the same.

8. *Exemption from indemnification requirements.* If a permittee is prohibited from providing indemnification to the United States by state or local law (typically, a state or local institution such as a public university or city recreation department), we encourage the Department to establish flexibilities to exempt these organizations from the indemnification requirement, provided the organization carries sufficient liability insurance coverage for activities carried out under its recreation permit.

Retain Opportunities for Public Involvement

As the Department considers strategies for streamlining the permitting system and expanding access opportunities, we urge the Department to retain opportunities for the public to participate in the land management decision-making process. By utilizing a public process that involves all stakeholder groups, the Department agencies can increase engagement and optimize solutions to benefit all citizens, who are equal shareholders in America's public lands.

Preserve the Natural Qualities of Recreation Destinations

The landscapes, viewsheds, and natural qualities of a recreation area are essential to the facilitated recreation experiences enjoyed in these areas. We encourage the Department to retain the environmental review tools that are needed to preserve these qualities and ensure recreation destinations remain attractive for generations to come. We also encourage the Department to retain established legislative and administrative designations such as mineral leasing withdrawals, Areas of Critical Environmental Concern, Wilderness Study Areas, and other national conservation lands, along with retaining the established management regime for these landscapes.

Conclusion

We greatly appreciate the opportunity to share our comments on Secretarial Order 3366. The direction provided by the Order is encouraging and we look forward to supporting the Department as it identifies strategies for implementation.

Sincerely,

The Coalition for Outdoor Access

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