

Testimony of
Sherry Barnett
deputy assistant director, renewable resources and planning
Bureau of Land Management
Before the House Resources Committee
Subcommittee on Forests and Forest Health on
H.R. 2386, The Outfitter Policy Act of 2001
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Mr. Chairman, thank you for the opportunity to testify today on H.R. 2386, the Outfitter Policy Act of 2001. The Department appreciates the need to establish consistent terms and conditions for outfitter and guide services on public lands and the continuing need to enhance public opportunities for recreational use of Public Lands. Outfitters and guides are important partners to the Department. More than just visitor service providers, outfitters and guides are critical ambassadors and "extensions" of the public land agencies in providing safe and enjoyable trips or activities for thousands of visitors using their public lands.

The Department supports the purpose of H.R. 2386 and shares a common goal to develop consistent terms and conditions while facilitating public opportunities for recreational use and enjoyment of public lands. However, we note that the Department is currently developing new regulations that we believe will address many of the purposes of this legislation. The Department does have concerns with some of the provisions as outlined in the current Bill. We look forward to working closely with the Committee to address them so that we can provide the best services to both outfitters and visitors on our public lands.

Relationship of H.R. 2386 to Existing Regulations and Policies

Outfitters and guides are critical providers of visitor services ranging from river rafting, backcountry horse pack trips, wilderness adventures, and a myriad of other activities on public lands. To manage the outfitting services provided by private entities, long-term policies and regulations, including a permit system, have been in place for many years for all agencies within the Department. For the BLM these are codified as regulations (43 CFR 8372) and are managed through a Manual and Handbook to maintain consistency across the 262 million acres the agency manages. H.R. 2386 also affects other agencies within the Department: the U.S. Fish and Wildlife Service (USFWS), and the Bureau of Reclamation (Reclamation). At the USFWS, most outfitter or guide permits are handled through a permit system on a case by case method that considers biological soundness, economic feasibility, effects on other refuge programs, and public demand. Reclamation manages its outfitters and other visitor services, through commercial concession operations under a licensing authority using a special recreation permit. While outfitters and guides are important providers to visitors to USFWS refuges and Reclamation projects, the majority of outfitter and guide permits--well over 3,000-- are issued and managed by the BLM due to the large acreage and diverse resources managed throughout the western states.

Recently, BLM has been reviewing and updating policies and procedures to develop updated regulations for managing the partnership between outfitters, guides, and the Department. These regulations have not yet been finalized, but most of the goals in H.R. 2386 are currently contained in existing BLM regulation and policy as well as further addressed in the new regulations now under review. The Department is committed to further enhancing our regulatory framework as identified in H.R. 2386. We also want to ensure that these policies are beneficial to the visiting public, fair and equitable, efficient, consistent, collaborative, convenient, and accountable.

Special Recreation Permits

Section 6(e)(1)(D) of H.R. 2386 proposes a term of 10 years for all outfitter permits. The Department can support the term of a permit for up to 10 years as outlined in the legislation providing that flexibility is allowed for agencies such as the BLM to respond to changes in resource condition or other reasonable and substantial changes such as Resource Management Plan (RMP) updates or other unforeseen changes in public demand in a given field location. While the Department recognizes that small business owners, such as outfitters and guides, often face the need for more stability in order to secure financing, insurance, or other demands, it is important that the authorized officer in an agency has the flexibility to manage issues with an outfitter or guide that may affect visitor safety, resource responsibilities, or some other change in the original permit. Such a policy balances the principles of efficiency and convenience while ensuring that the visiting public benefits and that BLM is accountable to the public for the resources that it manages.

Allocation of Use

H.R. 2386 addresses Allocation of Use in Sections 4(2) and (9). For BLM, the proposed allocation of use provisions in the Bill are a conflict with current policy and regulations. BLM issues permits on a first-come, first-serve basis until the affected area's desired use level is reached. The desired use level is determined primarily through the RMP process which is the primary tool under the Federal Land Policy and Management Act (FLPMA) to allocate use of federal lands managed by the BLM. Under current law and policy, BLM allows outfitters and guides as much freedom as possible under a special recreation permit (SRP) to operate and use lands as they need to operate their business and provide services to the visitors. Specific allocations are only granted when there has been an established limit of use allowed in a particular area due to analysis, public involvement, and consultation through the RMP and associated Environmental Impact Statement (EIS). The provisions for allocation of use currently in H.R. 2386 conflict with these existing policies and laws and may also have the unintended consequence of limiting competition in a certain area, thereby compromising the competitive approach that currently provides the highest quality services for visitors. In addition, allocation of use could be contrary to the public interest currently protected under FLPMA by providing an implied or perceived "right and ownership" to the outfitter's permit contrary to current provisions. Although allocation of use may be convenient, such a policy also would compromise the principles of fairness, efficiency, accountability, and may not be beneficial to the visiting public. We would be happy to work with the Committee on this issue to better balance these principles so that the outfitters can maximize their operations while providing quality visitor services.

Temporary Permits

The Department is concerned about provisions for temporary permits. The Department suggests temporary permits should have terms not exceeding one year. Currently, a probationary period is granted to maintain the highest safety and resource protection values for visitors, while providing new outfitters and guides the opportunity to grow their business. If an outfitter's performance is found to be satisfactory, a second one year extension is easily granted. This method, which is fair, consistent, efficient, and requires accountability, has worked well while providing flexibility to the Department to maintain the highest standards required under existing law and policy for visitor protection and resource management.

Transfer of Temporary Permits

The allocation of use for temporary or transferred permits, as allowed for in H.R. 2386, raise similar concerns as expressed earlier for permanent permittees. We would like to work with the Committee on the provision in the legislation for the threshold for automatic approval of transfer permits. As written in H.R. 2386, the 90 day threshold for automatic transfer may cause unintended problems for both the agencies and the outfitter permittees in complex cases or in the case of unforeseen workload issues.

Fee Structure Issues

While many of the provisions in H.R. 2386 for fees are consistent with current regulation, a fee structures based on whether a permittee can conduct a "successful business venture" may not be fair and equitable, consistent, efficient, and accountable. While the agencies strive to work in the most reasonable way to accommodate the needs of running

an outfitting or guide service, fees for commercial operations on public lands must provide a fair market return to the American public. Existing regulation provides a fair and equitable fee structure that has been working well for both outfitters and the Department's land managing agencies.

Access to Records and Performance

We would like to work with the Committee to clarify the provisions in H.R. 2386 for access and auditing of business records and performance evaluation procedures. While we agree with the principle of accountability and with most of the provisions in H.R. 2386 for these activities, we would like to suggest some clarification amendments to protect the public interest in these permits and maintain the highest and fairest methods for managing the outfitter and guide services provided to the public.

Conclusion

H.R. 2386 contains many positive goals and procedures for outfitter and guide services on public lands managed by the Department. Mr. Chairman, while we discussed most of our concerns today, let me assure you we stand ready to assist and address remaining issues so that the purposes of this legislation can be realized for the many partners that provide outfitting and guide services to millions of public land users. We have offered our concerns today in the spirit of maintaining the highest standards for the public and the permittees providing outfitter services.

Thank you for the opportunity to appear today to discuss these important issues in the Outfitter Policy Act of 2001. I will be happy to answer any questions you may have.

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