

Wildlands CPR Policy Primer

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The Federal Lands Recreation Enhancement Act: How Recreation Access Fees Are Transforming Public Land Recreation

By Bryan Faehner

FLREA Background

Attached as a rider to the Omnibus Appropriations Bill and signed into law on December 8, 2004, the Federal Lands Recreation Enhancement Act (FLREA) extends and expands the Recreational Fee-Demonstration Program (Fee-Demo) begun in 1997. The Fee-Demo program allowed public land management agencies to retain at least eighty-percent of collected revenue from existing and new recreation fees. This was a significant change in how public lands are managed because it introduced an incentive for managers to increase recreation fee sites and costs in order to bolster their budgets.

Before FLREA passed into law, Fee-Demo programs already existed in California, Arizona, Colorado, Washington, Oregon, and New Hampshire. They were so controversial that California, Colorado, Oregon, New Hampshire and dozens of counties, cities, and towns passed resolutions opposing them. Despite public resistance, Rep. Ralph Regula (R-Ohio), who created the Fee-Demo program, worked with Sen. Ted Stevens (R-Alaska) to make the program permanent. For their part, Senators Thomas (R-Wyoming), Craig (R-Idaho), Burns (R-Montana), and Domenici (R-New Mexico) tried to stop the rider from being attached, and had earlier in 2004 worked to pass a bill that would have made Fee-Demo permanent solely for the Park Service and ended the program for other public lands.

FLREA, which is often referred to as the Recreation Access Tax, or simply RAT, allows for three specific types of fees:

- Standard Amenity Recreation Fees: This applies to developed "areas" with at least six "amenities" such as parking, permanent toilets, permanent trash receptacles, interpretive signs, picnic tables, and security services.
- Expanded Amenity Recreation Fees: This applies to campgrounds, developed boat launches, developed swimming areas, and cabin or equipment rentals.
- Special Recreation Permit Fee: This applies to commercial users and organized events.

In addition, the law creates an interagency "America the Beautiful" pass that will replace the National Parks Pass (and likely cost over \$85) and puts in place Recreation Resource Advisory Committees (RRACs) to make recommendations on implementing fee programs. Failure to pay these new fees can be either a Class A or B misdemeanor with hefty fines, considerable jail time, and leave you with a criminal record.

Implementation and Site Survey Report

Forest Service and BLM implementation of FLREA has vastly overstepped the law and has failed to drop sites not in compliance. In a nationwide survey the Western Slope No-Fee Coalition (WSNFC), a diverse network of groups opposed to recreation fees, found more than 300 non-compliant fee sites in 11 states and 28 national forests or BLM districts. WSNFC also found that the agencies have created new fee categories, are charging fees for the very uses the law prohibits (such as entrance fees), and are adding fee sites before mandatory RRACs have been established to review them.¹ The agencies' misuse of FLREA falls under three fee scheme categories: "High Impact Recreation Areas" (HIRAS), Special Recreation Permits, and Trailhead Fees.



Photo courtesy of the Western Slope No-Fee Coalition.

HIRAs were created by the Forest Service and BLM to describe fee sites with little or no federal investment and appear nowhere in FLREA. The agencies base HIRAs on one of many loopholes in the law that allow fees for an "area" with certain amenities, though it never defines their scale. As a result, hundreds of thousands of acres have been made HIRA's with de facto entrance fees — often collected at entrance booths — in such places as Mt. Evans, Arapaho-Roosevelt NF, CO; American Fork Canyon, Uinta NF, UT; and a growing number of other public lands.

According to FLREA, Special Recreation Permits are "specialized recreation uses of Federal recreational lands and waters, such as group activities, recreation events, motorized recreational vehicle use."² In the past, these permits were required for large events, commercial activities, and guides/outfitters. However, the agencies have now reinterpreted a "specialized" recreation activity to include backcountry camping, mountain biking, boating, horseback riding, and even using certain high-use hiking trails.

Trailhead Fees are appearing in a growing number of forest and desert parking lots, despite parking fees being clearly prohibited without significant developments under FLREA. To capture more revenue, agencies are installing "amenities" to remote parking areas so fees can be collected. In addition, agencies are striking contracts with commercial enforcement companies and companies that administer automated pay stations that dispense parking passes.

With the passage of FLREA and its implementation by the Forest Service and BLM, the states of Montana, Colorado, Oregon, the Idaho House and the Alaska House all passed resolutions opposing the law and calling for its repeal. Diverse interests have joined to protest the “pay to play” philosophy. In Montana, for example, the Montana Trail Vehicle Riders Association, Montana Wilderness Association, Montanans for Multiple Use, Montana Wood Products Association, Montana Logging Association, Citizens for Balanced Use, and the Sierra Club all joined in support of House Joint Resolution 13, which states: “Montana’s culture, quality of life, and traditions, demand free access to public lands.”³

Starving the Beast

With an annual budget between \$4 billion and \$5 billion, recreation fee revenue within the Forest Service is relatively insignificant. In a 2002 report to Congress, for example, the agency reported they collected only \$35 million in Fee-Demo revenue in 2001. However, when you include the unreported \$10 million appropriated to manage the program discovered by the General Accounting Office (GAO) and other overhead, the program’s total revenue was likely less than \$15 million.⁴

Fee supporters claim that the revenue provided from recreation fees is critical for land managers as recreation funding at the forest and regional level has plummeted. Many fee opponents, however, suspect a strategy of ideologically driven political appointees intent on “starving the beast” by weaning forests and districts off federal appropriations and making them reliant on fees, partnerships, and private-sector revenue generation.

While Congressional appropriations have generally increased 1% to 2% annually (still well below the rate of inflation), funding to the regional and district levels has been dropping in many cases by double-digit percentages. Interestingly, recreation funding has shrunk most in the very areas fee programs exist. For instance, in Oregon and Washington where a “northwest forest pass” is required for trailhead parking, recreation funding for the Forest Service dove by 14% from 2004 to 2005. Moreover, trails maintenance dropped 24%.⁵

Why these funding drops have occurred remains unclear, though many believe that money may be being siphoned off for exotic weed programs, relocating staff, and wildland fire control. Needless to say, recreation fees do not appear to be supplementing appropriated funding for those forests and districts — they are supplanting it.

Marketing Public Lands to the Public

With FLREA in place, the Forest Service and BLM are now in the midst of a national review of recreation sites that will steer the agencies towards more concessionaire partnerships and a greater reliance on volunteers. Known as the Recreational Site Facility Master Planning (RS-FMP) process within the Forest Service and the Cost Recovery Doctrine in the BLM, these programs call for recreation sites to be made “financially sustainable” (i.e. profitable) and have a marketable “niche” by 2007.

The RS-FMP and Cost Recovery programs threaten to end free access to visitor centers, trailheads, undeveloped campgrounds, roads, and other recreation sites where recreation fees don’t already exist. The RS-FMP program has a tiered approach that ranks sites as either:

- Non-discretionary (concession, partner operated)
- Open (sufficient priority and funds)
- Closed (needed, but insufficient funds)
- Decommission (Non-niche conforming, high cost, low priority, etc).

According to the Forest Service, sites “may move between open and closed categories annually based on changes in funding, revenues, partnerships, concessions, or volunteer availability.”⁶ Moreover, even sites that charge fees could be closed if they aren’t profitable enough. As one Forest Service manager put it “In our developed sites we’ve been told they need to pay for themselves, or we need to get rid of them.”⁷

Already, these two doctrines are being incorporated into the agencies’ travel and resource management planning, despite conflicts with FLREA that specifically prohibit charging for use of dispersed areas, minimally developed sites, and limiting the “use of recreation opportunities only to areas designated for collection of recreation fees.” (Section 3.4)⁸

Conclusion

Without sustained public outcry and congressional intervention, political appointees will continue to direct the management of our public lands down a dangerous path that leads towards commercialization and privatization and away from the “public good” championed by Forest Service founder Gifford Pinchot and President Theodore Roosevelt. Once fully implemented, the socio-economic impacts of these changes will be catastrophic on rural communities where new tax prices will keep many folks off their public land. Our greatest hope is for public land patriots to continue to work together to protect one of America’s greatest birthrights — freely accessible wildlands.

What You Can Do

- Join WSNFC’s activist list-serve and get active;
- Ask your representatives to stop non-park recreation fees;
- Write letters to the editor;
- Donate to the WSNFC — with no paid staff your contribution will go far.

Key Resources

- www.westernslopenofee.org
- www.fs.fed.us/recreation/programs/recfee/
- www.fs.fed.us/r3/measures/prioritize/rs-fmp.

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Endnotes

- ¹ Western Slope No-Fee Coalition. “Site Survey Analysis of Forest Service and BLM Implementation of Federal Lands Recreation Enhancement Act.” Oct. 1, 2005.
- ² Federal Lands Recreation Enhancement Act. PL108-447.
- ³ 2005 Montana Legislature. House Joint Resolution No. 13.
- ⁴ Western Slope No-Fee Coalition. “Appendix 1 and 2.” <http://www.westernslopenofee.org/nofee/appendix1.html>.
- ⁵ Milstein, Michael. “US Forests Look For Sites To Close Down.” Oregonian. Apr. 12, 2005.
- ⁶ Forest Service. “Recreation Site Facility Master Planning Power Point.” <http://www.fs.fed.us/r3/measures/prioritize/rs-fmp/powerpoint/>
- ⁷ Brown, Keely. “Green Mountain Users Meet Forest Service Head-On.” Summit Daily News. Sept. 11, 2005.
- ⁸ Federal Lands Recreation Enhancement Act. PL108-447.