

Fixing The Federal Lands Recreation Enhancement Act In The 113th Congress

A Failed Experiment On Public Lands



White Mountain National Forest, New Hampshire

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To The Members Of The 113th United States Congress:

The Federal Lands Recreation Enhancement Act (16 U.S.C. 6801 et seq), which governs recreation fees charged to the public on National Parks and Forests, Wildlife Refuges, Bureau of Land Management Public Lands, and Bureau of Reclamation Reservoirs will sunset in December, 2014.

FLREA is a deeply flawed statute that has not worked well for either the public or the land management agencies. It should not be renewed. But it must not be allowed to sunset, either.

It must not be *renewed* because of the many abuses it has fostered, which this report will document.

It must not *sunset* because:

- That would leave a statutory vacuum into which the Forest Service and BLM will engage in a frenzy of recreation fees.
- The National Park Service would lose authority to charge entrance fees.
- The National Park Service would lose more than \$25 million per year that they now receive from the sale of interagency recreation passes authorized in FLREA. In fact, if Congress does not act *in 2013*, sales of annual passes, which exceed \$23 million per year across all agencies, will have to be curtailed because they will not be able to promise a full year of benefits.

Instead, FLREA must be *reformed*.

The impending sunset of FLREA presents Congress with an opportunity to re-evaluate the use of fees as a principal funding source for public lands, which began as an experiment in 1996 and has never received an open, standalone vote in Congress.

It's an experiment that has failed. Now is the time to establish common-sense guidelines that are fair and equitable to the public while still meeting the needs of the federal agencies, and to implement them through a public process.

This report is intended to start a conversation among the public, the agencies, and the Congress about recreation on federal lands and how it should be funded.

Background

I. Fee Demo (1996-2004)

Public lands fees first became controversial with the 1996 passage (as an appropriations rider) of the Recreational Fee Demonstration Program (Fee Demo). Fee Demo completely eliminated prohibitions in previous law (the Land and Water Conservation Fund Act of 1965) against charging for general use and access to Forest Service and Bureau of Land Management lands except in developed facilities (chiefly campgrounds). Fee-Demo was a “demonstration” intended to test the widest possible range of fees and methods of charging them. Fee Demo also allowed the National Park Service to increase park entrance fees without congressional approval and all agencies to retain fees instead of depositing them to the Treasury.

Fee Demo was renewed several times via riders to spending bills. During its eight years in effect, the Forest Service and BLM implemented broad fee programs on millions of acres of public lands. Entrance fees were placed on entire National Forests, federal fees were charged for use of state and county roads, and fees were levied on dispersed undeveloped backcountry such as hiking and OHV trails and wilderness areas.

Under Fee Demo the NPS increased entrance fees from their previous cap of \$5 per private vehicle (\$10 at Yellowstone-Grand Teton and Grand Canyon) to as much as \$20. The NPS also began charging additional layered fees for such things as backcountry access and interpretive programs.



Coconino National Forest under Fee Demo

These new fees and fee increases created a backlash from citizens who objected to them as double taxation, a burden on local communities surrounded by federal lands, and a barrier to public access and use of federally managed lands. Fee opponents pointed out that this fundamental change in public land policy had been accomplished without public debate or congressional approval. While the land management agencies pressed for permanent fee authority, an increasing number of citizens were calling for repeal of the Fee Demo program altogether.

II. Federal Lands Recreation Enhancement Act (2005-Present)

The Federal Lands Recreation Enhancement Act (FLREA) was Congress’s attempt to scale back fees to something more appropriate in response to citizen concerns about the broad, unlimited Fee Demo fees. FLREA repealed Fee Demo and replaced it with a new, more limited, ten-year fee authority. It also repealed the portions of LWCF that had governed recreation fees prior to Fee Demo. But FLREA never received a vote on the floor of the U.S. House and was never introduced or considered in the U.S. Senate. It was attached as a rider to the FY2005 omnibus appropriations bill.

“This bill will put an end to fears that fees will be misused by federal land managers since we have laid out very specific circumstances under which these fees can be collected and subsequently reinvested.”
-Rep. Richard Pombo, Chairman, House Committee on Resources, 2004, upon passage of FLREA in his Committee. Following enactment, the USFS and BLM proceeded to ignore and evade those “very specific circumstances.”

Up to that point, organizations opposed to fees had been working with congressional members and staff trying to find a compromise on the Fee Demo/public ownership issue. They asked to have over-broad provisions in the initial draft bill, introduced by Fee Demo author Rep. Ralph Regula (R-OH), removed and to have other provisions added preventing the Forest Service and BLM from imposing fees for dispersed undeveloped sites or for general access. The agencies in turn wanted unlimited fee authority with little or no congressional oversight.

Efforts at compromise ended abruptly when FLREA's initial language was replaced by an "amendment in the nature of a substitution" by Rep. Richard Pombo (R-CA), then-Chairman of the House Committee on Resources. Pombo's substitute language, without further public input, was attached to the appropriations bill by Rep. Regula and enacted as part of that must-pass spending bill. It was signed by the President on December 8, 2004 and sunsets on that date in 2014.

FLREA contains provisions that were intended to address the complaints about Fee Demo by limiting fees to use of developed areas, simplifying fee payment through an interagency pass program, and requiring public participation in fee decisions. These provisions were not implemented in good faith and have failed to achieve the stated goals of the sponsors.

Under the sections of LWCFR relevant to recreation fees that were in effect from 1965-1996, the agencies were prohibited from charging fees except in certain carefully defined and well-regulated circumstances established by Congress. FLREA turned that upside down, allowing the agencies to charge and retain fees for anything except a few specific activities. This gave the agencies a perverse incentive to find ways to evade the prohibitions.

III. The Land Agencies Have Ignored Or Bypassed FLREA's Fee Restrictions

The broad fee authority that the Forest Service and BLM became accustomed to under Fee Demo, coupled with the ability to retain fee revenue, created a powerful incentive to charge fees, and when FLREA was enacted the agencies largely ignored or evaded the provisions that were meant to protect public access. Despite prohibitions on Forest Service or BLM fees solely for parking, for passing through federal land without using facilities and services, for general access or entrance, for dispersed areas and undeveloped camping, or for scenic overlooks, and despite congressional direction that all agencies avoid multiple, layered fees, under FLREA:



Coconino National Forest Under FLREA

- Fees are levied for undeveloped backcountry, including designated Wilderness;
- Fees are charged for parking, including along state and county rights of way, for general access, and for passing through federal lands without using facilities and services;
- De facto entrance fees (under various euphemistic names) are charged for access to huge tracts of undeveloped Forest Service and BLM land;
- National Park entrance fees have skyrocketed and additional, layered fees proliferate in NPS areas;

IV. Forest Service Evasive Maneuvers Have Led to Litigation

The Forest Service modified their existing fee programs very little between Fee Demo and FLREA. Although claiming to have dropped fees at over 400 locations, more than half of those either never were Fee Demo sites, had already dropped fees long before, were rolled into larger fee areas, were

closed, or are in fact still charging fees. All of the most controversial Forest Service fee programs continued unchanged under FLREA, and hundreds of new and increased fees have been implemented since it was enacted.

Under FLREA, the Forest Service began making widespread use of a designation they coined called High Impact Recreation Area (HIRA), which does not appear anywhere in the law. HIRAs are large areas where there is a Standard Amenity Fee for access, despite the law's prohibitions on entrance fees for National Forests and for certain activities. By designating an area a HIRA, the Forest Service said, the six amenities that FLREA requires for a Standard Amenity Fee can be present anywhere within it, even if widely scattered and whether or not an individual actually makes use of them. A fee is charged for the entire area, on the theory that visitors *could* use the amenities, whether they do or not. By charging fees for parking at trailheads and for access to rivers and lakes, HIRAs came to control millions of acres of undeveloped backcountry and designated Wilderness.



"Build it and they will pay."
Vegetation encroaches on an unused picnic table installed in a trailhead parking lot merely to justify charging trail users an "amenity" fee.
Coconino National Forest

In 2008, citizens in Arizona and Colorado filed civil suits challenging HIRAs on the Arapaho-Roosevelt NF and the Coronado NF. The litigation became very complex and dragged on for almost four years. It culminated in February 2012, with a clear ruling by the 9th Circuit Court of Appeals stating that no one can be charged a fee merely for the presence of facilities and services, regardless of whether they are in close proximity or widely scattered. Fees can only be charged if facilities and services are actually used.

The Forest Service responded to the ruling not by correcting their implementation but by dropping the HIRA terminology. They also ceased issuing tickets for non-payment of fees, thereby avoiding having to defend their fees in court, where they would likely lose. But as of late 2012, most of the signs indicating that fees must be paid for parking are still in place. The general public has no way of knowing that they won't get a ticket, because the signs say they will. The agency is thus using fear and intimidation to coerce people into paying fees that they do not owe.



"Northwest Forest Pass Required" signs are still posted at hundreds of Washington and Oregon trailheads, even though the USFS has, as an internal policy, stopped writing Violation Notices. People continue to pay the fees out of fear of prosecution, without knowing that the USFS has stopped enforcement.

The Courts Have Spoken . . .

"As a general rule Congress has decreed that anyone may enter this country's great national forests free of charge."

-Judge Neil M. Gorsuch, 10th Circuit Court of Appeals, 2011, in Scherer et al v USFS, regarding the Arapaho National Forest's practice of charging \$10 to travel Colorado State Highway 5 to the summit of Mt Evans.



Mt Evans "HIRA," Arapaho National Forest



Red Rocks "HIRA," Sedona, Arizona, Coconino National Forest

"The FLREA explicitly repealed the Fee Demo Program in order to address criticisms of that program. Nonetheless, the result in the Red Rock Ranger District of the Coconino National Forest has been to maintain the same fee system as that in place under the Fee Demo Program."

-US Magistrate Judge Mark Aspey, Arizona District Court, in US v Smith, dismissing a criminal citation issued to James T. Smith at a remote Sedona trailhead where Mr. Smith parked his car for two days while hiking in a Wilderness area.

"Consider what would happen if a restaurant-goer inspected his bill and noticed an unexpected charge. If told that the fee was for ten bottles of wine that the patron's group neither ordered nor drank, the patron would rightly be outraged. He would not find much solace in a waiter's explanation that the wine cellar contained ten bottles, which the patron could have ordered if he wished."

-Judge Robert Gettleman, 9th Circuit Court of Appeals, February 2012, in Adams v USFS, regarding the Forest Service's use of HIRAs to charge people visiting Mt Lemmon an amenity fee whether they used any amenities or not.

. . . But the Forest Service isn't listening.

"The Mt. Lemmon decision (in Tucson) doesn't seem to affect us. We are not interpreting it as such nor do we feel we are affected by it."

-Connie Birkland, Coconino National Forest spokesperson, August 2012, in response to a media inquiry about how the Forest will respond to the 9th Circuit's ruling.

V. Privatization of National Forests

Another way the Forest Service evades the restrictions and requirements in FLREA is by using private concessionaires to manage federal recreation sites. They claim that once they lease a facility to a private firm (a decision made administratively with no public input), then FLREA no longer applies there. Under this interpretation, they allow private for-profit operators to establish new fee sites and increase fees, charge for activities for which FLREA prohibits fees, and refuse to accept federal passes under the terms established in FLREA. All this is done outside the purview of FLREA's public participation requirements.

Half of all Forest Service camping capacity, representing over 80% of the reservable (i.e. most popular) campsites, is now under private management. In addition, a large and increasing number of day-use sites have been privatized by being put into the concessionaire program. All of these, the Forest Service says, can be operated without regard to federal recreation fee law.

When the Forest Service hires a contractor to provide a service to the agency – a trash hauler, for example – the contractor must comply with federal wage requirements as specified in the Service Contract Act. Concessionaires, however, are not treated as contractors but rather as leaseholders, and are therefore exempted from the SCA. This allows them to pay very low wages. A combination of low wages for employees and high fees to the public is the foundation of the concessionaire business model. The Forest Service places the profitability of their private-sector “partners” ahead of their obligation to provide the public with equitable and affordable access to our National Forests.

The Forest Service frequently justifies recreation fees by making the claim that the money the public pays is retained locally and benefits the site they visited. But when the money is paid to a private entity, often one headquartered in another state, that is a hollow promise because the fees can be used in any way the company sees fit. Privatization causes confusion and anger in the public and undermines the very concept of public lands.

“ . . . requiring these concessionaires to provide free use [accept federal passes] could prevent their concessions from qualifying for the Service Contract Act (SCA) exemption from the higher wage rates imposed under the SCA. . . .Not qualifying for the SCA exemption could make some of these concessions unprofitable.”

-USFS Director of Recreation Jim Bedwell, Memo to Regional Foresters, March 2007



Concessionaire-managed trailhead, Coconino National Forest. Many concessionaires sell their own private passes for frequent visitation, while refusing to accept federally-issued annual and lifetime passes.

VI. BLM: Evasive Maneuvers Of A Different Sort

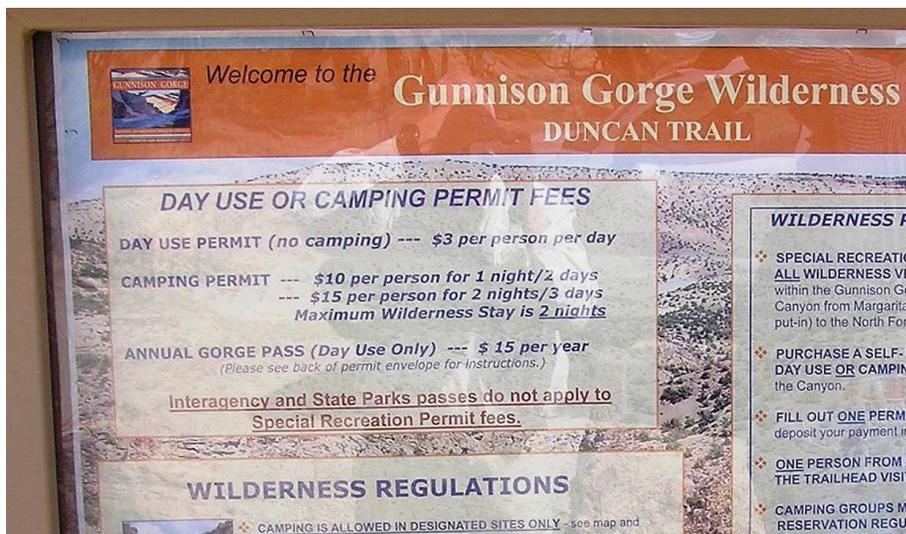
BLM sidesteps FLREA's requirement that Standard Amenity Fees can only be charged where amenities are used by putting most of their fees under a different category: Special Recreation Permits. Under this policy, they claim, BLM is allowed to charge fees without providing any amenities. Prior to FLREA, Special Recreation Permits were used for such things as large organized events, guides and outfitters, and commercial uses. Now BLM routinely requires Special Recreation Permits for individual, non-commercial access to Wilderness and other undeveloped areas for hiking, horseback riding, boating, off-highway vehicle use, and primitive camping.

For example, at Cedar Mesa in Utah BLM requires all hikers who enter any of seven remote canyons by any of eleven trailheads to obtain a Special Recreation Permit for both day and overnight use, even though there are no developed facilities within the canyons. Cedar Mesa is managed for primitive recreation and, prior to Fee Demo, had virtually no developed facilities and no maintenance backlog. In 2001, it hosted less than 10,000 visitors per year. Today there is a new multimillion-dollar Visitor Center and paved parking lot, a developed campground, and numerous backcountry toilets that will require expensive maintenance for years to come, all funded by Special Recreation Permit fees. These facilities were not needed or requested by visitors—they were driven by the money that was available.



Primitive Area Trailhead, Cedar Mesa
Monticello Utah BLM Field Office

BLM also requires Special Recreation Permits to enter many designated Wilderness areas, which are completely undeveloped as a matter of law, such as Gunnison Gorge Wilderness in Colorado and the Aravaipa and Paria Wildernesses in Arizona,



Gunnison Gorge
Wilderness access fees,
Montrose, Colorado BLM
Field Office

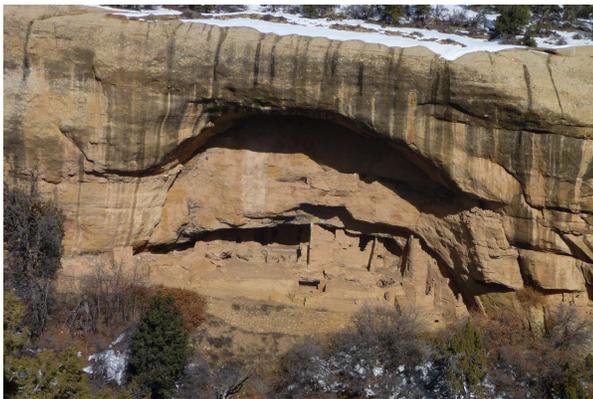
Where they had been charging an entrance fee – which was allowed under Fee Demo – such as for the OHV areas at Little Sahara in Utah and Imperial Sand Dunes in California, BLM simply changed the name to Special Recreation Permit Fee, bypassing the FLREA’s prohibition on entrance fees. FLREA authorizes SRP fees only for “specialized recreational uses.” BLM interprets this as allowing fees for *all* uses of “*special areas*,” completely reversing the plain language of the law.

VII. National Park Service

The NPS has used its permanent fee authority under FLREA to launch another round of entrance fee increases on top of those done under Fee Demo. The most expensive National Parks are now charging \$25 per vehicle, or five times what was allowed under the LWCFA.

In 2006, NPS began a new round of increases but was stopped by Congressional objections. At the 147 NPS sites that charge entrance fees, 139 (95%) were going to increase between 2006 and 2009. Many of these fees would have been double or triple the amounts that were charged under Fee Demo. NPS also planned to increase entrance fees every three years, indexed to inflation, beginning in 2011. When their plan became public they received strong objections from many members of Congress whose states or districts contain NPS units that contribute strongly to local economies. In response, NPS froze entrance fees at 2007 levels for the time being.

But NPS also began to charge additional overlapping and layered fees, on top of entrance fees or in units where there is no entrance fee. These additional fees are required for such things as backcountry camping. For example, it costs \$50 for a family of four to get a permit for a two night backpacking trip in Grand Canyon – in addition to the \$25 entrance fee. Some interpretive programs incur extra fees even when they are central to the mission of the unit, like the ranger-guided ruins tours at Mesa Verde National Park. There are also extra fees for use of transportation systems that are mandatory to access large portions of National Parks, such as Denali’s shuttle buses, which must be used to access all but 15 miles of the 90-mile Park access road and cost from \$26.75 to \$50 per adult.



Layered Fees: Mesa Verde National Park

- Entrance: \$15 per vehicle
- Tickets (required) to visit Cliff Palace, Balcony House, or Long House: \$3 per person, all ages
- Tickets (required) for Cliff Palace Twilight Tour: \$10 per person, all ages

VIII. As Fees Have Gone Up, Visitation Has Gone Down

As the agencies have turned to fees as a principal funding source, visitation to America’s public lands has declined.

- **Forest Service:** Prior to 2000 the Forest Service had no statistically reliable method of counting visitors. In the mid-1990s, when they were trying to get Fee Demo enacted, they claimed 800 million visitors annually. They have since admitted that this was nothing more than a guess that included people merely passing through a National Forest on state or

federal highways, and that it also included many people who were counted several times during one visit.

In 2000 the Forest Service began a program called National Visitor Use Monitoring, which promised to be a more reliable and statistically valid method to estimate visitation. NVUM is a rolling survey in which each Forest is studied once every five years. For a national estimate, the oldest year of data is dropped out as each new year is added. NVUM has issued five national reports showing steadily declining numbers—from 214 million in 2001 to 166 million in 2012. But because their analysis methods have changed with each successive report, the Forest Service refuses to concede that the NVUM data can be used to show trends.

- **BLM:** In 1997, BLM had 60.9 million recreational visitors. In 2011 visitation was about 57.8 million, down 5% overall. But visitation to fee sites between 2003 and 2011 fell by almost half, from 10.2 million to 5.5 million. BLM has gone from 10 Fee Demo sites in 1997 to 430 sites charging fees under FLREA, most of them for Special Recreation Permits to access Wilderness and other undeveloped backcountry areas via hiking trails, OHV routes, and rivers, and for primitive camping.
- **National Park Service:** NPS visitation since 1997 (the first year of Fee Demo implementation) peaked at 287.1 million in 1999 and then began several years of flat or decreasing visits. Concerned about the negative publicity around their declining numbers, in 2006 NPS managers began counting people entering the Washington Mall area for the Cherry Blossom Festival as NPS visitors for the first time, which artificially boosted their annual total by 2.1 million. In 2011, NPS visitation was 278.9 million, down 3% from the all-time high of 287.2 million in 1987, despite nearly 30% population growth during the same period and the addition of some 60 units to the system.

For many years, agency spokespersons claimed that fees are not a barrier to visitation because they represent a small proportion of the cost of visiting federal lands. But in 2009 Secretary of Interior Ken Salazar, who as a U.S. Senator for Colorado had sponsored legislation to repeal FLREA, directed the NPS to begin offering many more fee-free days than they had in the past. It quickly became apparent that visitation increases when fees are waived. Several fee-free days each year have now been adopted by the Forest Service and BLM as well as the NPS. But providing a few free days is not the solution. The fact that more free days are being offered is proof that fees are understood by the agencies as part of the problem.

"By waiving fees, everyone will have the opportunity to enjoy the wonder and rejuvenation of recreation on national forests and grasslands."

Forest Service Chief Tom Tidwell, admitting that fees are a hindrance to some visitors, while announcing fee-free days in a 2010 press release.

Several studies have shown that the connection between increased fees and declining visitation impacts low-income and minority populations the most. All of the agencies have outreach programs to try and engage under-served populations and young people in healthy outdoor recreation, but they are simultaneously pricing them off our public lands.

While it is impossible to say whether fees are the only factor driving visitation declines, they are without question an important one.

IX. Fees Have Not Solved The Backlogged Maintenance Problem

When Fee Demo was first conceived and enacted, its supporters promoted it as a way to get funding onto the ground for the persistent backlog of deferred maintenance that all of the federal land management agencies complained of. The public was promised that fees would supplement, not supplant, appropriated funding.

In 1997's first annual report to Congress on the Fee Demo program, the Forest Service claimed a maintenance backlog of \$1 Billion. Sixteen years later their FY2013 Budget Justification cites a maintenance backlog of \$5.5 Billion. Neither number means anything, however, since according to the GAO, "While [the Forest Service] acknowledges that it has a significant deferred maintenance problem, it has not developed a reliable estimate of its deferred maintenance needs. As a result, even if the agency knew how much fee revenue it is spending on deferred maintenance, it would not know if its total deferred maintenance needs are being reduced." (GAO-03-470)

Cataract Lake Picnic Table,
White River National Forest,
in 2009, after 12 years of
charging fees for picnicking.



From the very first, fee revenue was used for day-to-day operations, not as supplemental funding. Despite substantial increases in agency Congressional appropriations, District Rangers and local BLM managers nationwide report significant cuts to their recreation budgets that they are expected to make up for by collecting fees. The missing funds appear to have been diverted into national and regional overhead, currently estimated at more than 80% in the Forest Service. An internal worksheet obtained from the Deschutes National Forest in 2007 showed that they received about \$1.8 million in appropriated funding for recreation operations and maintenance that year but less than \$150,000 of it was available for developed recreation sites.

Evidence abounds that fees have not succeeded as a source of supplemental funding and have in some places created more problems than they solved:

- The Sequoia National Forest listed the purchase of toilet paper and cleaning supplies as "accomplishments" of its fee program at Lake Isabella.
- The Coconino National Forest spends about 48% of the revenue from vending machine sales of its Red Rocks Pass in Sedona on commissions to the vending machine provider, and about 22% of revenue overall on vendor commissions. The Coconino does not sell any Red Rocks Passes to the public. They only sell to vendors, who take a minimum commission of 10%.
- GAO reports (GAO-03-470 and GAO-06-1016) identified poor accountability, high collection costs, failure to follow federal accounting standards, collections far in excess of actual needs, and the lack of regular audits of recreation fee programs as problems.

- According to GAO-06-1016, 42% of FLREA “unobligated” funds accounts (i.e. available for expenditure but not spent) had balances that exceeded the total amount collected per year. For the Forest Service, it was 58%.

An example of fees failing to fix the maintenance backlog is one of the earliest Fee Demo programs, the Adventure Pass in southern California. Beginning in 1997, all four National Forests in the southern part of the state began requiring purchase of an Adventure Pass for entry. In 2003 a Forest Service spokesperson touted the benefits of fees in a newspaper story:

“The fee also helps make the forests safer, not just because the Forest Service can afford to hire more rangers but also because of the secondary effects of projects like graffiti cleanup. That’s more than an aesthetic issue, much more. Because when an ordinary family of visitors go to a national forest and they come upon an area that’s got a lot of graffiti on the rocks and the trees, it makes them uncomfortable. They view it as perhaps a dangerous place.”

Today there are about 300,000 Adventure Passes purchased each year, but the funds don’t seem to be making it to the forests anymore, if they ever did. In September, 2012, the Los Angeles Times published a story about the San Gabriel Canyon area, in which the forest supervisor was quoted:

“Tom Contreras, supervisor of the 640,000-acre Angeles National Forest, said a few more rangers and cleanup crews would certainly enhance his ability to enforce laws on the river, but budget restraints have made that all but impossible. ‘We have one full-time technician assigned to that area — I wish we had more,’ Contreras said.”

Contreras made no mention in the article about the funding the forest receives from Adventure Pass sales or how it is spent. Here is what San Gabriel Canyon looked like in November 2012, after 15 years (and counting) of charging Adventure Pass fees:



X. Fee Retention: The Root of the Problem And The Unintended Consequences

One of the most significant changes in national recreation policy that occurred under Fee Demo/FLREA was that the federal land management agencies were allowed to retain fee revenues instead of depositing them in the Treasury. On the surface, fee retention can seem like a good idea, since recreation fees stay at the site where they are paid. But the idea is fundamentally flawed.

By allowing—in many places requiring—local recreation managers to raise their own operating budgets, fee retention created new bureaucracies in Washington, diminished Congress’s oversight of agency spending, and almost eliminated the role of the public as the owners of public lands.

Prior to Fee Demo/FLREA, the agencies were allowed to charge some fees under the authority of the Land and Water Conservation Fund Act of 1965. The LWCFA allowed entrance fees for most National Parks and fees for use of developed facilities, chiefly campgrounds. Congress provided guidelines as to where fees could be charged, and fees were prohibited except where they were specifically allowed. The fee revenue that was generated was deposited into the Treasury, less 15% for cost of collection, and the agencies received annual operating funds through the congressional budget process.

Fee Demo/FLREA has turned that system upside down. Now the agencies are allowed to charge fees anywhere, except for certain prohibitions, which are largely ignored. Most importantly, the fee revenue is now retained by the agency without review by Congress, a policy known as fee retention.

This about-face on fee policy, from prohibited-except-where-allowed to allowed-except-where-prohibited, coupled with the fee retention authority, has changed the focus of the public lands agencies:

- From resource management and public service to revenue generation;
- From viewing the visiting public as owners to treating us as mere customers;
- From being stewards of resources owned by all Americans to treating the lands they manage as agency property;



Coronado National Forest

Fee Demo was originally conceived as a way to supplement appropriated funding and allow the federal land management agencies to reduce or eliminate their backlogged maintenance. Instead, user fees have replaced appropriated funds in local recreation budgets, while congressional appropriations are used elsewhere and backlogs grow. Local managers have a perverse incentive to build ever more maintenance-requiring infrastructure, in a never-ending spiral of construction fueled by the incentive to “build it and they will pay.”

Despite having authority to retain recreation fees, the Forest Service, and to a lesser extent the BLM and NPS, continue to turn federal recreation facilities over to private concessionaires, which actually reduces the agencies’ available funds. Facilities built and upgraded with public money are used to create business opportunities for the private sector, to the detriment of families seeking affordable outdoor recreation.

Congress Must Act, And Soon

The approaching sunset of FLREA presents Congress with the opportunity to create a new vision for American recreation policy that encompasses these concepts:

- America's public lands are the heritage of present and future generations and should be managed so as to provide opportunities for all Americans to engage in outdoor recreation;
- As publicly owned assets our public lands should receive adequate public funding and must not be privatized;
- User fees paid for use of federal facilities should be treated as income to the owners of the facilities, i.e. the American public, and should be spent under the oversight of Congress;
- User fees should be limited to developed facilities and must not be charged for dispersed undeveloped areas or for basic services such as toilets or drinking water;
- Entrance fees should be limited to National Parks and Wildlife Refuges, and fee authority for National Parks should be uncoupled from that of the other agencies;
- Special Recreation Permits must be applicable only for commercial users, group activities, and organized events, not for individual or family use;
- No fee should be required for access or use of any designated Wilderness Area for private, non-commercial purposes;
- Where managers determine that permits allocating use must be required to protect resources or avoid crowding, such permits must be issued at no charge. Nominal fees to reserve a permit in advance would be acceptable;
- To enhance the affordability of outdoor recreation, federal interagency passes should continue to be offered. Lifetime passes should be available at a modest price, as they have been for nearly 50 years, to seniors 62 and older, and to the permanently disabled for free. Senior and disabled passes must continue to provide a 50% discount on camping fees. An annual pass should be available at a price specified by Congress and with increases only as approved by Congress. The annual pass should be made available free to active duty military personnel and their dependents, and at half price to honorably discharged veterans. Passes should allow entrance into all NPS and FWS units that charge entrance fees and cover any day-use fees allowed on other federal lands;
- Partnerships and management agreements with private and non-profit organizations should be limited to charging only for facilities that the managing agency is allowed to charge for, and non-agency operators should be required to honor federal interagency passes on the same terms as the agencies.

America's public lands are a unique and precious legacy that must be sustained for future generations. That legacy has been imperiled by the Federal Lands Recreation Enhancement Act and only immediate action by Congress can repair the damage.

WHAT HAPPENS NEXT?

One of three things.

If Congress Does Nothing: FLREA is clear that it will sunset on December 9, 2014. It is less clear about what would happen then. Some think that the fee authority in the Land and Water Conservation Fund Act (LWCFA) would be reinstated. Others say that if FLREA sunsets there would be no statute controlling or limiting what recreation fees could be charged. These opposing views would most likely have to be settled by litigation, and in the meantime the agencies would be in a statutory vacuum. If Congress wishes to have control and oversight of recreation fees, it's important to take action to make that explicit.

If Congress Renews FLREA Unchanged: The Forest Service and BLM will continue to expand their fee programs and demand direct payment for access to millions of acres of federal recreational lands. Individuals and families will continue to be threatened with criminal prosecution if they fail to purchase a pass to go for a hike or horseback ride, enjoy a scenic overlook, or park along a roadside or at a trailhead. Concessionaires will continue to charge private fees for activities that FLREA prohibits the agencies from charging. NPS fees will increase and new fees will be imposed, without congressional approval.

Those options are bad for both the public and the agencies. Instead, Congress must replace FLREA with revised recreation fee authority.

This can be done either as new standalone legislation or as reinstatement of the portions of the LWCFA that were repealed by FLREA, with amendments. The construction of a revised fee program must be an open, public conversation that includes the public, the agencies, and the Congress. Final legislation must receive an open vote in both houses of Congress.

It's time for the conversation to begin. Will you take the lead?