

A Government Agency Running Amok

By Michael Hoyt
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This is a story of a government agency which has lost sight of its assigned mission, an organization that not only ignores the wishes and explicit directives of the U.S. Congress, but is thumbing its collective nose at Elected Officials and following an agenda arrived at out of public view and without public notice. That agency is the United States Forest Service, a 45,000+ employee¹ strong group with a military-like structure, which over time has developed an internal culture that values advancement of career bureaucrats and preservation of its own organization over its publicly-stated mission of, “Caring for the land and serving people ...”²

Our journey of discovery, which eventually led to the unearthing of the driving force behind the Forest Service’s strategic plan, began when our all-volunteer non-profit organization, the Bitterroot Cross-Country Ski Club, received a surprise notice on February 2, 2012, from the Wisdom District of the Beaverhead-Deerlodge National Forest. The communication stated that the relationship under which we had operated for almost a quarter of a century would not be allowed to continue. That long-term association had enabled our Club to design, build, groom, operate, and maintain the cross-country ski trails and Gordon Reese Cabin (warming hut) located at Chief Joseph Pass in Montana for free public use—the trails received more than 9,000 visitor days during the 2011-2012 ski season.

For the next several months members of our Board quietly worked with Forest Service officials, attempting to find a workable solution which would allow our all-volunteer Club to continue providing a free-use recreational experience to the public.³ During many meetings and hundreds of hours doing research and delving into the legalities of the edict which had been thrust upon us, we slowly came to realize that something was going on behind the scenes in the Forest Service, a hidden force that was hindering negotiations and making it difficult if not impossible for our Club’s collaboration with the Forest Service to continue without change.

Our research unearthed several facts, some quite disconcerting:

- The “legal” basis for the directive which was presented to our Ski Club was constructed upon the misapplication of “personnel” regulations that had no bearing on the situation⁴;

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30,000 Full-time and salaried Employees, 15,000 part-time and seasonal employees

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US Forest Service Website – http://www.fs.fed.us/fsjobs/jobs_about.shtml

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http://ravallirepublic.com/news/opinion/mailbag/article_539af9aa-6e44-11e1-a612-001871e3ce6c.html

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5 C.F.R. 2635.704, 5 C.F.R. 2635.101(b), 5 C.F.R. 2635.702, and 5 C.F.R. 2635.501

- Local and Regional Forest Service officials refused to perform the research necessary to validate (or invalidate) the application of the referenced regulation;
- In 1996 Congress passed the original legislation (Fee Demo) which allowed the BLM and the Forest Service to collect fees, but only under certain conditions⁵;
- That legislation directed that collected fees be used mainly (80%) for the operation, maintenance, or upgrade of the facilities from which they were gathered;
- The Forest Service and BLM quickly developed a habit of ignoring Congressional guidelines, collecting fees in situations that were not authorized, and never fully accounting for the use of the accumulated fees;
- Congress passed new more restrictive legislation (FLREA) but the BLM and the Forest Service continued to ignore the new legislative restrictions⁶;
- The BLM and Forest Service have, on a nationwide basis, been instituting and increasing “pay-to-play” fees for recreational activities that had historically been free to the public;
- The Forest Service did an internal investigation of “fee collection” after many public complaints but did not release the findings—a report was finally released under FOIA, but was so highly redacted it was meaningless⁷;
- Organizations and individuals around the country are fighting “pay-to-play” fees⁸;
- During February 2012, the Ninth Circuit Court of Appeals ruled that the Forest Service had overstepped its authority to initiate fees and was violating the Recreational Enhancement Act (FLREA)⁹; and
- To date, the Forest Service has chosen to ignore the Ninth Circuit Court’s ruling.¹⁰

Our research was given direction by that old adage suggesting that the path to finding the sometimes hidden truth of a perplexing situation is to, “Follow the money.”

We began by looking into the possibility that use-fees were collected to be used “at the whim” of the Forest Service and out from under Congressional oversight. Given the Forest Service’s

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<http://www.nepfa.org/feehistory.html>, <http://www.gpo.gov/fdsys/pkg/PLAW-104publ208/html/PLAW-104publ208.htm>

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<http://www.law.cornell.edu/uscode/text/16/chapter-87>

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http://www.westernslopenofee.org/pdfuploads/HIRA_Report.pdf

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<http://www.westernslopenofee.org/>

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<http://www.adventure-journal.com/2012/02/controversial-forest-service-fees-struck-down-by-court/>

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<http://www.kvsun.com/articles/2012/03/03/news/update/doc4f511573f1348034447599.txt>

annual budget of well over \$5 billion¹¹ of discretionary funds, the amounts collected from use fees seem insignificant. However, our research indicates there is accuracy to this viewpoint and that it should not and cannot be discounted.

The basis for that validity appears in one of the Forest Service's own documents, "A Strategy for Recreation," dated October 19, 1998.¹² Under the section labeled **Financial Health**, it reads, "Increased Funding: Alternative funding mechanisms are essential to decrease reliance on appropriated funds and provide predictable funding to programs." In plain English, that means the Forest Service's intention is to actively look for sources of funding not allocated by Congress and over which Congress has little if any control.

The initial, most intense, and continuing endeavor by the Forest Service to increase internal sources of funding has been to concentrate on increasing the public's use of cabins and developed campsites on public lands managed by the agency.¹³ This sustained struggle to extract ever-increasing "pay-to-play" fees from the public includes a concentrated effort to move the method of reservation to one that is Internet-based, the National Recreation Reservation Service (NRRS).

Under the leadership of Lynne Beeson, the Forest Service's Program Manager of an interagency team dedicated to increasing direct revenue for several federal agencies, site inventory on the NRRS has increased by 11% and the volume of reservations has grown to \$80 million and 1.6 million reservations.¹⁴ Those reported amounts are not insignificant, and although spread over several agencies, a lion's share belongs to the Forest Service, manager of the largest number of developed campsites and rental cabins (The Forest Service manages more than 361,000 fee campsites and 2,200 recreation areas).¹⁵

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<http://www.fs.fed.us/publications/budget-2011/fy-2011-usfs-budget-overview.pdf>

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<http://www.wildwilderness.org/docs/str4rec.htm>

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In the past the Forest Service relied on the extraction of natural resources like timber, minerals, or energy, for income. Now that, for several reasons, resource extraction is diminishing, the agency has turned to extracting funds directly from your wallet.

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American Recreation Coalition <http://www.funoutdoors.com/node/view/2775>, http://govwin.com/seantucker_blog/forest-service-developing-100-million/250385

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U.S. President, Domestic Policy Council, Task Force on Outdoor Recreation Resources and Opportunities: An Outdoor Recreation Policy to Strengthen America's Communities (July 1988, chapter 5, pages 106-128)

ReserveAmerica¹⁶ is the internet provider that operates the online reservation system for the Forest Service, other U.S. Government agencies, and many private companies. Headquartered in Toronto, Canada, ReserveAmerica is not a U.S. company but one that does business on an international scale. Its fee, negotiated by our government’s agencies for each visitor placing a reservation, is \$9—it keeps 60%, returns 30% to Lynne Beeson’s team for administration of the online reservation system¹⁷, and places 10% in a fund from which the Forest Service and other participating governmental agencies may request money (grants) for special projects.

This arrangement meant that of the \$8.0 million charged for placing 890,989 reservations during 2011, ReserveAmerica kept \$4.8 million (60%) and returned the remaining \$3.2 million (40%) to U.S. government agencies.¹⁸ By condoning the use of a vendor based outside the United States to handle the reservation system for its agencies, our government is supporting the removal of \$4.8 million from our nation’s economy. If the majority of our nation’s citizens were aware of this state of affairs, it would be considered “not particularly intelligent”, especially during a less than robust national economy.

Study of Table 14 (page 80) contained in the Forest Service’s 2012 Triennial Report to Congress, reveals internal agency activities. Reservations handled by ReserveAmerica for the Forest Service during reported three year period show the following.

Year	# Reservations	# Increase	Income	Increase
2009	298,973	-	\$23,335,347	-
2010	405,908	6,935	\$24,427,618	\$1,092,271
2011	437,889	31,981	\$25,900,487	\$1,472,869

A Portion of Table 14

During 2010 the number of reservations increased by 6,935 (1.74%) and the amount of money collected increased by \$1,092,271 (4.68%), clearly indicating the average dollar amount of each reservation went up. What these numbers, by themselves, don’t disclose is whether the Forest Service raised prices—most likely—or people decided to make reservations at more expensive locations—less likely during the current down economy.

In 2011 the number of reservations increased by 31,981 (7.88%) and the dollars received increased by \$1,472,869 (6.03%). That large increase in reservations over a 12-month period

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ReserveAmerica is a whole-owned subsidiary of Active Network Inc (NYSE: ACTV). The second largest holder of ACTV’s stock is Disney. Are we looking at the first stages of *Disneyfication* of our public lands?

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Why is this 30% (\$3) returned to Lynne Beeson’s group and, either not charged in the first place, or returned directly to each agency from which it was generated? Such an arrangement looks a lot like a kickback scheme between a U.S. government agency and a foreign business.

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http://www.doi.gov/ppa/upload/FLREA_Triennial_Report_2012_FINAL.pdf

clearly reveals the recent Forest Service push to move as many of its managed income sites to the online reservation system as quickly as possible.

The Forest Service section of Table A-3 (page 101) in the same 2012 Triennial Report to Congress indicates why the agency is so intent on moving as many of the income properties it manages to the online reservation system operated by ReserveAmerica.¹⁹

Amounts in Millions	2003	2004	2005	2006	2007	2008	2009	2010	2011
REA Fee Revenue	\$39.3	\$46.8	\$50.2	\$53.4	\$61.0	\$61.1	\$66.5	\$64.9	\$64.9
Cost of Collection	\$5.3	\$6.5	\$7.9	\$4.9	\$5.1	\$5.8	\$5.5	\$4.9	\$4.7
Cost % Income	13.6%	14.0%	15.6%	9.2%	8.4%	9.4%	8.3%	7.6%	7.2%

Amounts include all FLREA Fee Revenues, not just those from ReserveAmerica

Except for a blip in the agency’s cost of collection during 2004 and 2005 while their organization learned how to interface with the public using the Internet, costs (as a percentage of each dollar accumulated) for the collecting of fees from the public has steadily decreased. The Forest Service cannot be faulted for attempting to reduce its cost of doing business. That makes sense. But they can and should be faulted for using a company based outside of the United States to help them accomplish their goal. Their decision to use ReserveAmerica to process reservations is effectively moving money and jobs outside our borders. It’s difficult to imagine there is not at least one States-based company that could provide a similar service.

The above table also shows that revenues the Forest Service received from FLREA fees remained flat for the fiscal years 2010 and 2011.²⁰ Given the past behavior of the agency, it should come as no surprise then, that during 2012, the agency is:

- Redoubling efforts to increase revenues by converting no-fee assets under their control to income producing holdings;
- Increasing fees on properties that already produce income; and
- Intensifying the flow of income-producing assets to the online reservation system operated by ReserveAmerica.

Another reason for the “big push” during 2012 rather than some other year may be that Congress required only a triennial report. The next report is not due until 2015, giving the Forest Service plenty of time to find ways to “spin” the results for presentation to our elected officials.

The Forest Service makes little or no effort to inform the public of its strategic goals and the agendas being implemented to reach those objectives; however, their plans are not totally secret. It is simply a matter of knowing where to look.

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http://www.doi.gov/ppa/upload/FLREA_Triennial_Report_2012_FINAL.pdf

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The one question the Forest Service does not appear to consider is, “Could the flat revenues be an indication that fees have reached a point that visitors are now being discouraged?”

Our research uncovered agency documents and reports that clearly show:

- There is an organization-wide strategic goal to produce income from agency-managed sources (public lands and other assets) over which their outfit has a large measure of control; and
- The tactics for reaching that overreaching goal include agendas to, move income-producing assets to the Internet (reduces collection costs), raise fees on assets already producing revenues, and convert no-fee recreation sites to “pay-to-play” income sources.

During her testimony before an oversight hearing into implementation of the Federal Lands Recreation Enhancement Act by the Forest Service and BLM²¹, Kitty Benzar, co-founder of the Western Slope No-Fee Coalitions (WSNFC) quoted from the following press release issued at the time the Federal Lands Recreation Enhancement Act (FLREA) was passed. Its sponsor, U.S. Representative Ralph Regula, expressed his intent:

“As passed by Congress, H.R. 3283 would limit the recreation fee authorization on the land management agencies. No fees may be charged for the following: solely for parking, picnicking, horseback riding through (*Federal Lands*), general access, dispersed areas with low or no investments, for persons passing through an area, camping at undeveloped sites, overlooks, public roads or highways, private roads, hunting or fishing, and official business. Additionally, **no entrance fees will be charged for any recreational activities on BLM, USFS, or BOR lands**. This is a significant change from the original language. The language included by the Resources Committee is much more restrictive and specific on where fees can and cannot be charged.” [Bold appeared in the original document]

Unfortunately the Forest Service and other government agencies continue to ignore not only the letter of the law, but the intent. Ms. Benzar testified three years later, June 18, 2008, before the Subcommittee on National Parks, Forest, and Public Lands.²² She pointed out that a survey conducted by the WSNFC, found that fee programs at over 738 sites were then (2008) noncompliant and that the noncompliance fell into three broad categories:

1. High Impact Recreation Areas (HIRAs)²³
2. Special Recreation Permits; and
3. Trailhead Fees

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http://www.westernslopenofee.org/pdfuploads/Kitty_Testimony_Senate_26Oct2005.pdf

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http://www.westernslopenofee.org/pdfuploads/House_Testimony_Benzar_18June08.pdf

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An internal Forest Service document dated, February 25, 2011, claims that the acronym HIRA, “... creates the impression that the agency has created a new type of fee, ... To ensure the term HIRA does not cause future confusion, the Forest Service will begin phasing out the use of the term and will simply refer to these areas as ‘standard amenity recreation areas.’”

The excuse for noncompliance is, according to one Colorado Forest Service official who was quoted in the press, *“In our development sites we’ve been told they need to pay for themselves, or we need to get rid of them.”*²⁴

The article goes on to state that the official, *“... attributed the cuts to decisions made in Washington. ‘Last December, Congress passed fee legislation in the Federal Land Recreation Enhancement Act,’ he said, adding that the local district rangers were simply following federal orders. ‘They’re being forced to do a lot of what they’re doing here,’ he said. ‘As for doing nothing, we can’t legally do that. So there’s no easy answer.’”*

In response to a myriad of claims that the public does not want “pay-to-play” fees, the Forest Service maintains in the Executive Summary of its 2012 FLREA Triennial Report to Congress that, “USFS surveys show an overall visitor satisfaction rate of 94%, with 83% of respondents stating that they are satisfied with the value received for the fee paid.”²⁵

It is difficult to believe that assertion of “visitor satisfaction” being true. When was the last time you asked someone to charge you for something that had previously been free of charge? Considering that the Forest Service uses a statistically-questionable method of extrapolation from extremely limited data to arrive at its results, all while ignoring complaints and unsolicited negative input from the public, it is debatable whether their statements regarding “satisfaction” contain even a minimal level of truthfulness.

In the same 2012 Triennial Report, the agency states that it, “... manages over 20,800 recreation sites, approximately 4,000 of which have recreation fees collected under REA and 2,000 of which have other types of fees.” It goes on to say that, “About 98% of the 193 million acres managed by the Forest Service, and 68% of developed sites, are available to the public for free.”

Taken together those two statements suggest that a sufficient number of no-fee areas are available to the public—obviously this is the Forest Service’s intent. What the statements do not say is that, of the USFS 20,800 recreation sites, most are in practically inaccessible Wilderness Areas a very long way from any road or trail and that, of the 98% of the 193 million acres that are free, the vast majority are visited only by a small number of the extremely adventurous. Because of their inaccessibility and low visitation rates, it is not cost effective for the Forest Service initiate fees for most of the 193 million acres, and the agency has no immediate plans to even try.

Instead the organization concentrates the application of fees to areas under its control that have the highest visitation rates. In other words, the Forest Service puts into practice the belief that the places most people want to see should require that each visitor pay a fee. And, they have a strategic plan to ensure that happens.

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If you ever wondered why the Forest Service abandons trails, this is the reason.

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http://www.doi.gov/ppa/upload/FLREA_Triennial_Report_2012_FINAL.pdf (page V)

The current FLREA legislation which allows the Forest Service and other agencies to initiate and collect “pay-to-play” fees contains a sunset clause which effectively ends that authority during December 2014. Understandably the government agencies that benefit from that legislation are already lobbying Congress to not simply renew the legislation, but to rewrite it so that each of those organizations are given additional leeway to initiate and collect fees, especially for areas that are not eligible under the current legislation.

It is now time for those opposed to the existing legislation to fight its renewal in any form. More than a few current Forest Service employees are adamantly opposed to use-fees for public lands. Unfortunately given the existing culture of the Forest Service, “Above all else, protect our organization,” it is impossible for an employee to voice “out-of-line” opinions and retain employment. Only pressure from outside the agency has any chance of forcing this necessary change.

This is not a struggle against fees for use of facilities like developed campgrounds with modern amenities, highly developed boat launches and swimming areas, government-built cabin or lookout rentals, and museums, or for services such as camper hookups and dump stations.²⁶ It is a battle against fees of any sort for use of public lands, especially recreational activities like hiking, walking, skiing, horseback riding, climbing, driving over existing roads, camping at undeveloped campsites, amenities and services provided by volunteers, or access to Wilderness Areas.

As it stands now, the Forest Service is not supposed to charge fees unless six specific amenities are present.

Picnic Tables	Permanent Trash Containers	Toilets
Parking	Interpretive Signing	Security

The Six Required Amenities

Because the legislation allows the agency to collect “modest fees” at any location which has all these amenities, it is very simple to change a no-fee site into one that produces income for the organization. Take a trailhead for example. Most have a parking area and many have toilets and interpretive signing.²⁷ Considering how easy it is for the Forest Service to add a trash can, a picnic table or two, and arrange for a law enforcement officer to drive by the trailhead periodically, it should come as no surprise that trailheads top the list of locations the agency plans to convert to income sites. But, two points should be remembered. FLREA legislation forbids fees for hiking or the performance of other activities that take place on trails and, it is patently obvious that trailheads provide access to trails. Unfortunately, the USFS is ignoring the intent of the legislation which forbids such “activity fees” and relying on a convenient misreading of the law that appears to allow the existence of the six required amenities as the reason why a trailhead fee is not only legal but appropriate.

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Such fees can be justified on the grounds that they require development and are not naturally occurring features

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The FLREA legislation is not clear on exactly what constitutes “interpretive signing.”

In spite of the fact that U.S. Representative Ralph Regula intended to stop the Forest Service from charging fees for any recreational activity (hiking, climbing, horse riding, etc.), the ambiguous wording of the legislation has allowed the agency to ignore the intent of the law and do as it wishes. Fuzzy wording makes it possible for the USFS and other government agencies to take advantage of U.S. citizens and, in effect, apply a double taxation on the users of public lands and properties. Not surprisingly, FLREA was quickly dubbed by fee opponents as the Recreation Access Tax, or RAT.

It was because of the large number of constituent complaints that Senators from both Montana and Idaho introduced a bill in 2008 and re-introduced it in 2009 in an attempt to repeal FLREA. Unfortunately the bill went nowhere either time. Now that agency implementation of FLREA has finally reached Montana and Idaho, it is time for these Senators to introduce their bill again, and this time, get it passed.²⁸

Further evidence that the very top levels in the Forest Service's Washington Office are the driving force behind the institution of new fees was provided by the Western Slope No-Fee Coalition in a white paper which was published during 2007. It stated:

“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 operational budgets, while congressional appropriations are used for other purposes. Under Fee Demo/FLREA, less appropriated funding has flowed ‘to the ground.’ Upper level managers have required local sites to sink or swim based on fee revenue, while they redirect recreation appropriations for other purposes.

According to FY 2006 Congressional budget data, the Forest Service now uses 43% of its appropriated budget for Washington Office administration. When Regional and District administrative costs are added in, the result is that 82% of appropriated funding is being spent on administration.

For FY 2007, appropriations were kept flat under a continuing resolution—neither increased nor decreased. Nevertheless, local managers were handed another 10% cut in their operations and maintenance funding—not by Congress, but by their own agency administrations. These funds were spent on national and regional overhead.

Aggravating the situation has been administration policy, as codified in OMB Circular A-25, which calls for all government-provided services and facilities to be self-sustaining through user fees. This policy has been applied down to the level of requiring a family to pay \$5 or \$10 for the use of a picnic table for an hour.

...

Fee retention has allowed the agency hierarchies to starve local managers for appropriated funding and to expect them to be self-sufficient through fees. Although appropriated funding has increased, less is getting to the ground.”

Given the fact that disproportionate amounts of appropriated funds from Congress are siphoned off by upper-level management—if WSNFC claims are to be believed, 40+% for the Washington

Office and an almost equal percentage for Regional and District administrations, both truly astronomical—it is no wonder that District Rangers and Forest Supervisors are ready and willing to increase fees. They believe they have to do so just to keep the areas under their jurisdiction above water and, to keep their jobs.²⁹

Paying a fee for access to public lands is not a partisan issue, but an ethical one. FLREA is having an ever-increasing impact on residents of every state—each contains land or waters under management by the Forest Service, the Bureau of Land Management, the Bureau of Reclamation, the National Park Service, or the Fish and Wildlife Service. The issues of double taxation and conversion of free-use public lands into pay-to-play sites are national concerns that have implications for every citizen of the nation.

If the Forest Service and other land and water management agencies truly want to know which managed resources are desired by recreational visitors, here is a suggestion. Rather than charge fees and fabricate visitor satisfaction statistics, questionable conclusions then used to bamboozle Congress, each organization could simply install voluntary donation tubes at each facility—trailhead, boat launch, visitor centers, swimming areas, etc. The number of dollars collected at each site would soon indicate the current desires and satisfaction levels of users.

Many USFS trailheads already have sign-in boxes and (sometimes) have forms available to visitors. But rather than making use of those forms to compile valid statistics, the Forest Service believes that its questionable methods of statistical analysis and extrapolation (of information gathered on lengthy forms completed by employees) is somehow superior—a cynic might suggest, “More easily manipulated.”

If you want to put an end to this circus, contact the elected officials of your state (with a CC to Tom Tidwell, Chief of the Forest Service) and let them know you expect them to support a bill which ends the authority of the Forest Service and other government agencies to impose fees for the use of public lands and waters.

It has been suggested, with good reason, that any new bill should include language which restores Congressional oversight of these rogue agencies, limits their ability to make attempts at funding themselves, and places restrictions on the amounts the organization spends on administration—it is time for this group with its military-like structure to put more boots on the ground and limit the number of backroom generals.

An additional reminder that you are unhappy with the fact that our government is essentially condoning the movement of money and jobs out of the country (by allowing agencies to use ReserveAmerica to make cabin and camping reservations) would also be appropriate.

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A total of 80+% or any figure anywhere near that, for administration is simply astounding. No private sector business could possibly survive with such top-heavy management. In effect, the agency’s top management—a relatively small number of people—has said to the people who actually perform “on the ground” work, “We’re keeping most of the money that Congress allocates because we are more important than you. If you want to keep your jobs, then find ways to raise enough money to cover your salaries.” It is difficult to imagine that management-level bureaucrats could hold a more contemptuous attitude toward the Forest Service “working stiffs”, the only people in the agency who actually perform jobs from which the public actually receives a benefit. It is absolutely dumbfounding that Congress has allowed this sickening conduct to continue for so long.