

# WESTERN SLOPE NO-FEE COALITION

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## **ANALYSIS OF FOREST SERVICE FEE IMPLEMENTATION GUIDELINES**

The U.S. Forest Service has issued Interim Implementation Guidelines to local forest managers instructing them on how to implement the Federal Lands Recreation Enhancement Act (FLREA), better known as the Recreational Access Tax (RAT). These guidelines purport to guide managers in following congressional intent as they transition from the previous Fee Demo program to the new law.

Instead, they do just the opposite. They instruct local managers on how to *bypass* congressional constraints and *illegally* charge fees for dispersed areas, general access, and recreational use of undeveloped land. The guidelines are written so as to modify existing fee programs as little as possible, while extending new fees to millions more acres of public land. Fees will be charged for whole or nearly whole National Forests in California and Arizona, and for vast tracks of forests in Colorado, Washington, Oregon, New Hampshire, and other states. Fees will be charged for trailheads, OHV routes, mountain biking trails, equestrian trails, and wilderness areas. All of this is in clear contradiction to congressional intent and to the letter of the law.

### **FLREA (RAT) BACKGROUND**

The RAT was attached to the 2004 omnibus appropriations bill by Congressman Ralph Regula and signed by the President December 8, 2004. The Western Slope No-Fee Coalition had worked with U.S. House Resources Committee members and staff all the previous summer and into September trying to find a compromise on the Fee Demo/public ownership issue. We pushed to have over-broad provisions removed from the bill and to have other provisions added preventing the agencies from imposing fees outside of sites with developed facilities. The agencies in turn wanted unlimited fee authority with little or no congressional oversight.

The resulting law pleases neither side. It is poorly written, riddled with contradictory and ambiguous language, and open to multiple interpretations. When it passed, we predicted that the agencies would seize every opportunity to interpret it as broadly as possible.

What we could not have predicted was that the Forest Service would ignore the language on limitations and actually *make up* new fees that are not specified in the law at all. But that is what they have done. The implementation guidelines show a breathtaking disregard for the restrictive language and a clear intent to have the fee program they want, regardless of public or congressional opinion, or the law.

## THE LAW: AN OVERVIEW

The RAT defines and allows three levels of fees.

1. Standard Amenity Recreation Fee: This applies to developed “areas” with at least six “amenities”: parking, permanent toilet, permanent trash receptacle, interpretive sign, picnic tables, and security services.
2. Expanded Amenity Recreation Fee: This applies to campgrounds, developed boat launches, developed swimming areas, and cabin or equipment rental.
3. Special Recreation Permit Fee: This applies to commercial users and organized events.

For all three types, the law contains language intended by Congress to limit the proliferation of fees.

## THE LAW VS. THE IMPLEMENTATION GUIDELINES

- **The law states:**

Section 803(d)(1) **PROHIBITION ON FEES FOR CERTAIN ACTIVITIES OR SERVICES.** --The Secretary shall not charge any standard amenity recreation fee or expanded amenity recreation fee for Federal recreational lands and waters administered by the Bureau of Land Management, the Forest Service, or the Bureau of Reclamation under this Act for any of the following:

(A) Solely for parking, undesignated parking, or picnicking along roads or trailsides.

(B) For general access unless specifically authorized under this section.

(C) For dispersed areas with low or no investment unless specifically authorized under this section.

(D) For persons who are driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using the facilities and services.

(E) For camping at undeveloped sites that do not provide a minimum number of facilities and services as described in subsection (g)(2)(A).

(F) For use of overlooks or scenic pullouts.

Section 803(e)(2) **PROHIBITED SITES.**--The Secretary shall not charge an entrance fee for Federal recreational lands and waters managed by the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service.

The Forest Service has decided that the prohibitions on entrance fees and charging for dispersed areas with low or no investment is too restrictive, and so they have made up a new fee category called a “High Impact Recreation Area.” HIRAs are not authorized anywhere in the new law.

The Forest Service definition reads:

“A high impact recreation area is a clearly delineated, contiguous area with specific, tightly defined boundaries and clearly defined access points (such that visitors can easily identify the fee area boundaries on the ground or on a map/sign); that supports or sustains concentrated recreation use; and that provides opportunities for outdoor recreation that are directly associated with a natural or cultural feature, place, or activity (i.e., *waterway, canyon, travel corridor, geographic attraction* – the recreation attraction).

*[emphasis added]*

The definition continues:

“They are not an entire administrative unit such as a National Forest, *but may include a collection of recreation sites*; and

They typically display one or more of the following characteristics:

- a) They are within 2 hours driving time of populations of 1 million or more;
- b) They contain *rivers, streams, lakes or interpreted scenic corridors*;
- c) Natural and cultural resources management activities are conducted in the area to maintain or enhance recreation opportunities; and
- d) They have regionally or nationally recognized recreation resources *that are marketed for their tourism values*,

*[emphasis added]*.

By establishing these HIRAs the Forest Service is creating access points where they will charge de facto entrance fees. They are inventing their own authority to charge for trails, gravel roads or paved travel corridors such as National Scenic Byways, National Recreation Areas, for multiple non-compliant sites, and for large parts of National Forests. They are punishing local efforts to promote tourism by imposing fees for geographic attractions created by nature.

We emphasize: “*High Impact Recreation Areas*” are not defined or authorized anywhere in the new law. The agencies are making them up to allow themselves to charge fees outside their legal authority to do so.

- **The law states:**

- **Section 803(f) Standard Amenity Recreation Fee**

- ...the Secretary may charge a standard amenity recreation fee for Federal recreational lands and waters under the jurisdiction of the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service, but only at the following:

- (1) A National Conservation Area.
- (2) A National Volcanic Monument.

(3) A destination visitor or interpretive center that provides a broad range of interpretive services, programs, and media.

(4) An area--

(A) that provides significant opportunities for outdoor recreation;

(B) that has substantial Federal investments;

(C) where fees can be efficiently collected; and

(D) that contains all of the following amenities:

(i) Designated developed parking.

(ii) A permanent toilet facility.

(iii) A permanent trash receptacle.

(iv) Interpretive sign, exhibit, or kiosk.

(v) Picnic tables.

(vi) Security services.

When the law passed, we predicted that the word “area” would be very broadly interpreted, and the guidelines confirm that we were right. Besides the language quoted earlier allowing a fee for “*a collection of recreation sites*,” they instruct and encourage local managers to charge Standard Amenity Recreation Fees as long as the six “amenities” listed are “located in an integrated manner so they can reasonably accommodate the visitor.” How far away from a fee site can the facilities be and still provide “reasonable accommodation”? That is not specified. Local managers are free to interpret this requirement to grandfather-in existing fee sites regardless of how far away the facilities are.

The guidelines encourage fees at trailheads that have the six “amenities” anywhere in the general “area,” making no distinction between people who are just accessing a trail to walk, hike, or horseback ride and those who are using the trailhead facilities. The guidelines not only mark trailheads especially for fees, they also make it illegal to access that trail/road and associated dispersed areas from another location “to avoid fee payment at an associated trailhead or fee site.”

The guidelines define “permanent toilet” to include porta-potties, “permanent trash receptacle” to include seasonal dumpsters, and “security services” to be provided by volunteers with no safety or security training of any kind.

- **The law states:**

**Section 803(h) Special Recreation Permit Fee-** The Secretary may issue a special recreation permit, and charge a special recreation permit fee in connection with the issuance of the permit, for specialized recreation uses of Federal recreational lands and waters, such as group activities, recreation events, motorized recreational vehicle use.

Where Standard fees or HIRAs are not applicable, the Forest Service has expanded on their long-standing authority to charge for permits for commercial use or large organized events. *Without legal authority*, they have split permits into two categories:

1. "Special Use Permits" for outfitting/guiding permits and recreation event permits.
2. "Recreation Permits" which allow them to charge for all uses where they cannot charge a Standard Amenity Fee or HIRA Fee.

Recreation Permits are defined as:

"...noncommercial and issued as a means to allocate capacity and/or disperse use, protect natural and cultural resources, provide for the health and safety of visitors, and to help cover the higher costs for providing specialized services...Examples include, but are not limited to:

1. Wilderness permits (must be coordinated with Wilderness program staff);
2. River rafting/float permits (if wild & scenic river, must be coordinated with that program staff);
3. Wildlife viewing areas (e.g., Pack Creek under capacity allocation system);
4. Hot springs;
5. Specialized trail systems including OHV, snowmobile, equestrian, and mountain bike;
6. Target shooting ranges;
7. Cross-country ski trail grooming;
8. Snow play areas;
9. Christmas tree permits (must be coordinated with Forest Products staff);  
and
10. Recreational mining (must be coordinated with Minerals staff)

This category truly opens up *any* activity on *any* National Forest to fees. The only prerequisite to charging for an area under Recreation Permits is the agency's perceived need for money, not the amenity criteria of the RAT or any other public benefit whatsoever. Under Recreation Permits, citizens will be charged for a *type of use*, not for the use of a particular site. This is a direct contradiction to the stated intent of Congress.

While these guidelines were issued by the Forest Service, the BLM considers almost all their fees sites to be under the Recreation Permit system, therefore none of the protections in the law apply.

Again, we emphasize: "*Recreation Permits*" are not defined or authorized anywhere in the new law. The agencies are making them up to allow themselves to charge fees outside their legal authority to do so.

- **The law states:**

**SEC. 804. PUBLIC PARTICIPATION.**

(a) In General- As required in this section, the Secretary shall provide the public with opportunities to participate in the development of or changing of a recreation fee established under this Act.

(b) Advance Notice- The Secretary shall publish a notice in the Federal Register of the establishment of a new recreation fee area for each agency 6 months before

establishment. The Secretary shall publish notice of a new recreation fee or a change to an existing recreation fee established under this Act in local newspapers and publications located near the site at which the recreation fee would be established or changed.

(c) Public Involvement- Before establishing any new recreation fee area, the Secretary shall provide opportunity for public involvement by--

- (1) establishing guidelines for public involvement;
- (2) establishing guidelines on how agencies will demonstrate on an annual basis how they have provided information to the public on the use of recreation fee revenues; and
- (3) publishing the guidelines in paragraphs (1) and (2) in the Federal Register.

The law goes on to order the agencies to establish Recreation Resource Advisory Committees (except when the agency, “in consultation with” a state’s Governor, decides they don’t need one), and spends almost five pages describing how RRACs are to be organized and who can be appointed to them. The agencies have complete control of who is appointed, and the RRACs are advisory only.

The guidelines instruct local managers that fees for Special Use Permits, including their invented category of “Recreation Permits,” are not subject to the RRACs or any other public review and that the prohibition on charging fees for persons who are driving through, boating through, horseback riding, or hiking through public lands does not apply.

The guidelines tell managers that for new fees or increased fees implemented before establishment of the RRACs, they need only notify “the local Congressional delegation and key elected officials” and do “adequate public participation/notification.” These instructions disregard the requirement in the law to “publish a notice in the Federal Register of the establishment of a new recreation fee area for each agency 6 months before establishment.”

## **CONCLUSION**

The House Resources Committee took at least some steps to try and restrict the Forest Service, Bureau of Land Management, and Bureau of Reclamation from abusing the fee authority by restricting their ability to charge general entrance fees, fees for dispersed areas and fees for simply walking, riding or driving through our public lands. The agencies have ignored those restrictions and simply written their own fee bill. As a result, existing Fee Demo sites will be rolled into larger sites, reducing (maybe) the number of, but vastly increasing the scope and impacts of, fee sites. These guidelines do not reflect the intent of Congress.

Here is an excerpt from a press release issued by Congressman Regula, the father of fees and sponsor of the RAT, and the man responsible for attaching the RAT onto the omnibus bill in the middle of the night:

“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, 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.” **[emphasis in original]**

The Forest Service Interim Implementation Guidelines contradict this statement. The American public is being railroaded by its own public servants.

The WSNFC calls on Congress to suspend all public land fees outside of developed campgrounds, to repeal the RAT, and to demand accountability from our land management agencies. Whether the agencies call these Entrance Fees, Recreation Fees, User Fees or Recreation Permit Fees, they are an Access Tax being imposed on American citizens merely for visiting their own public land.

If it walks like a RAT and quacks like a RAT—it’s a RAT!