

WESTERN SLOPE NO-FEE COALITION

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User Fees for Federal Lands: A Failed Experiment

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I. Fee Demo (1996-2004)

Public lands fees have been controversial since the 1996 passage (as an appropriations rider) of the Recreational Fee Demonstration Program (Fee Demo). Fee Demo relaxed 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 also allowed the National Park Service to increase park entrance fees and to retain them within the agency instead of depositing them to the Treasury.

Fee Demo was renewed several times and during those years 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.

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

The Federal Lands Recreation Enhancement Act (FLREA) was attached as a rider to the 2005 omnibus appropriations bill. It never received a vote on the floor of the U.S. House and was never introduced or considered in the U.S. Senate. The FLREA repealed Fee Demo and replaced it with a new, supposedly more limited, permanent fee program.

Up to that point, organizations opposed to fees had been working with U.S. House Resources Committee members and staff trying to find a compromise on the Fee Demo/public ownership issue. They asked to have over-broad provisions removed from the bill and to have other provisions added preventing the agencies 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.

The FLREA contains provisions that were intended to address the complaints about Fee Demo by limiting fees to developed areas, simplifying fee payment through an interagency pass program, and requiring public participation in fee decisions via Recreation Resource Advisory Committees. These provisions have failed to achieve their goals, as discussed below.

III. Land Agencies Are Ignoring Or Bypassing FLREA Fee Restrictions

Because FLREA is poorly written and riddled with contradictory and ambiguous language, and because the authority to retain fee revenue creates a powerful incentive to charge fees, the agencies have ignored or bypassed the provisions of the FLREA that were meant to protect public access:

- Fees continue to be levied for access to undeveloped backcountry, including designated Wilderness.
- Fees continue for parking, including along state and county rights of way, and for passing through federally managed lands on state and county roads.
- De facto entrance fees continue for access to huge tracts of undeveloped Forest Service and BLM land.
- The Forest Service is implementing policies that will result in the closure of thousands of recreation sites unless they can be self-supported from fees.
- National Park entrance fees have skyrocketed and additional, layered fees continue to proliferate in NPS areas.

Forest Service: The Forest Service has modified 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 continue unchanged since passage of FLREA.

The Forest Service is making widespread use of their concept of High Impact Recreation Areas, a designation that does not appear anywhere in the FLREA. HIRAs are large areas where there is a charge for entrance, despite the law's prohibition on entrance fees for

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National Forests. In testimony before the U.S. Senate, Undersecretary of Agriculture Mark Rey provided information showing that the Forest Service operates 95 HIRAs encompassing 1,407,634 acres with 981 recreation sites charging Standard Amenity fees and 339 charging Expanded Amenity fees. Over 700 of the Standard Amenity sites—a full 75%—do not meet the legal requirements for charging a Standard Amenity fee. Through trailhead and parking fees, these HIRAs control access to millions of acres of undeveloped backcountry and designated Wilderness.

The Coronado National Forest asserts that the FLREA authorizes them to charge an entrance fee for an area of any size as long as somewhere within it are the six amenities required for Standard Amenity sites. Within the Coronado's Mt Lemmon HIRA there are trailheads accessing backcountry and Wilderness as well as primitive, undeveloped camping areas. They contend that because the area also includes some developed picnic areas and some developed campgrounds, they can charge a fee for entrance regardless of which facilities the visitor actually uses.

The Arapaho-Roosevelt National Forest has gone further, charging an entrance fee for the use of Colorado State Highway 5 (the Mt Evans Highway) even though some of the six required amenities are completely lacking within the Mt Evans HIRA and there is not a single site there that qualifies for a Standard Amenity fee. The Mt Evans fee has brought the Forest Service into conflict with the State of Colorado, which has a law prohibiting tolls on existing state highways and contends that the Mt Evans entrance station violates that law.

In California, under Fee Demo, there was an entrance fee charged for access and use of the entire Angeles, Cleveland, Los Padres, and San Bernardino National Forests. Since FLREA those Forests have declared 31 HIRAs that encompass 390,100 acres. That sounds like a small percentage, but those HIRAs contain trailheads and parking areas that effectively control access to over 3 million acres of public land. Some HIRAs consist entirely of a single trailhead, picnic area, or interpretive site, and some HIRAs are within other HIRAs.

Where they cannot find a way around the fee restrictions in the FLREA, Forest Service managers are simply transferring management of public lands to private enterprise or non-profit organizations. For example, the Coconino National Forest is allowing a private corporation to charge fishermen and picnickers \$5 per day for parking at Lake Mary, near Flagstaff, Arizona, and the Forest Service has notified numerous county governments that recreational facilities in their areas will be closed unless they find non-profit groups to “adopt” them.

The Forest Service is also pursuing a policy called Recreation Site Facility Master Planning, under which between 3,000 and 5,000 recreation sites nationwide will be closed, decommissioned, or otherwise removed from the developed recreation program because they do not bring in enough revenue to pay their operating costs, and hundreds more will see fee increases or new fees. RSFMP has raised alarm in rural counties and towns that depend on Forest visitors for their economic health. More than 100 Forests have completed RSFMP plans detailing which sites will be closed, but only a dozen of the plans have been released to the public, and none of them are being subjected to public comment under NEPA.

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Accumulated Forest Service campground fees of \$93 million from prior to Fee Demo/FLREA are being used to fund the RSFMP process, and funds appropriated by Congress for facilities maintenance are being used to implement it. This is a situation where recreation fees are being used to plan the closure of recreational sites, and facilities maintenance funds are being used to remove facilities - a situation that has infuriated many local residents. On the Grand Mesa-Uncompahgre-Gunnison National Forests, 100 recreation sites are slated for closure/decommissioning, and some decommissionings have already taken place. The GMUG was one of the first to begin implementation of their RSFMP plan but has still not released the plan for public review.

Bureau of Land Management: BLM has not dropped a single fee as a result of the change from Fee Demo to FLREA, despite the restrictions in the new law. In fact, BLM has increased fees and added new fee sites without following the public participation process that the FLREA requires for new or increased fees. BLM charges fees for access to millions of acres of public land, and is routinely charging for use of undeveloped backcountry including designated Wilderness.

BLM has sidestepped the FLREA's requirements for Standard Amenity fees by putting most of their fees under a different category: Special Recreation Permits. Prior to FLREA, Special Recreation Permits applied to such things as large organized events, guides and outfitters, and commercial uses. Now BLM is requiring Special Recreation Permits for individual and small-group use of undeveloped areas for hiking, horseback riding, off-road vehicle use, and primitive camping, and for Wilderness.

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. At last report, it hosted less than 10,000 visitors per year. Today there is a new multi-million 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.

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

Where they were charging an entrance fee under Fee Demo, such as at Little Sahara in Utah, BLM has simply changed the name to Special Recreation Fee, bypassing the FLREA's prohibition on entrance fees for BLM lands.

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. At the 147 NPS sites that charge fees, 139 (95%) will increase between 2006 and 2009. Many of these fees will be double or triple the amounts that were charged under Fee Demo. The most expensive National Parks are now charging \$25 per vehicle, or five times what was allowed under the LWCF. Beginning in 2011, NPS plans to increase entrance fees every three years, indexed to inflation.

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NPS has also begun to charge additional overlapping and layered fees, on top of entrance fees. These additional fees are required for such things as backcountry use (\$50 for a family of four for a backcountry permit for a two night backpacking trip in Grand Canyon – in addition to the \$25 entrance fee), special interpretive programs like the \$10 fees for sled dog demonstrations at Denali National Park and Behind the Scenes tours at the Roosevelt-Vanderbilt National Historic Sites, and for use of transportation systems that are mandatory to access large portions of National Parks, such as Denali's shuttle busses that must be used to access all but 15 miles of the 90-mile Park access road.

IV. 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: Any discussion of Forest Service visitation is complicated by the fact that prior to 2000 the agency, by their own admission, had no statistically reliable method of counting visitors. In the mid-1990s they claimed as many as 800 million visitors annually but have since conceded that this was 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 their National Visitor Use Monitoring program, which promises to be a more reliable and statistically valid method to estimate visitation. NVUM is a rolling 5-year 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. For those Forests that were surveyed in the first round of NVUM in 2000 and again in the second round in 2005, visitation has fallen by 25.7%.

BLM: In 1997, BLM recreation sites had 60.9 million visitors. By 2004 visitation had dropped to about 54 million, down 11%. During the same period, BLM went from 10 Fee Demo sites to 187 sites charging fees under FLREA, most of them for Special Recreation Permits to access undeveloped backcountry areas via hiking trails, OHV routes and rivers and for primitive camping.

National Park Service: NPS visitation in 1997, the first year of Fee Demo implementation, was 279.4 million. Visitation peaked in 1999 at 287.1 million and has been on a decline ever since, to 272.6 million in 2006, down 5% in seven years. The 2006 numbers would have been even lower except that beginning then, NPS managers decided to begin counting people entering the Washington Mall area for the Cherry Blossom Festival as NPS visitors for the first time, which added 2.1 million to the total.

Park Service spokespersons have claimed that entrance fees are not a barrier to visitation because they represent a small proportion of the cost of visiting a National Park. But consider this comparison of three NPS-managed areas that are in close proximity to each other, draw visitors from the same metropolitan areas, and offer similar recreational opportunities. Visitation has declined drastically more at the one that charges an entrance fee.

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NPS Managed Area	Entrance Fee	1997 Visitation	2006 Visitation	Change in Visitation
Great Smoky Mountains National Park	\$0	9,965,075	9,289,215	Down 6.8%
Blue Ridge Parkway	\$0	18,373,279	18,953,478	Up 3.1%
Shenandoah National Park	\$15	1,587,790	1,076,150	<u>Down 32.2%</u>

Despite such clear evidence, NPS is increasing fees at 139 sites between 2006 and 2009, and 19 sites are increasing fees twice during that period. Beginning in 2011, NPS has announced they will increase fees every three years. Corresponding further declines in visitation can be expected.

While it is impossible to say whether fees are the only factor driving the declines, they are without question an important one. Regardless of what is driving them, they are substantial and are affecting every agency. Many people, including some Members of Congress, have questioned whether, at a time of declining visitation, it is wise to add a barrier to public use in the form of fees.

V. America the Beautiful Pass Meets Resistance

The FLREA mandates the agencies to collaborate on a national interagency pass called the America the Beautiful Pass. The ATB Pass replaces the National Parks Pass and the Golden Eagle, Golden Age, and Golden Access Passes. By law, the agencies must accept the ATB pass to cover all NPS Entrance Fees and all Forest Service and BLM Standard Amenity Fees.

The ATB Pass was launched on January 1st, 2007, and has not been well received:

- The \$80 price, which represents a 60% increase over the cost of the National Parks Pass and comes at a time of declining Park visitation, has caused NPS supporters and members of Congress to express concern that the American public is being priced out of their National Parks.
- If the ATB is purchased from a private retailer or online, as may be the majority, the areas visited by the pass holder receive nothing.
- Because the Forest Service and BLM accept it only at Standard Amenity sites, and the NPS accepts it only for Entrance Fees, visitors still face additional, layered, fees for Special Recreation Permits, backcountry permits, developed campgrounds, special interpretive programs, and concessionaire-managed sites.
- The layered-fees issue is especially affecting BLM visitors because almost none of their recreation sites accept the ATB, and there is no national pass that allows access to all BLM Special Recreation Permit areas.

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- Because ATB replaced the popular National Parks Pass, the NPS anticipates a net loss of revenue due to pass sales made at non-NPS sites. For the first quarter of 2007, sales of ATB Passes are less than half those of the National Parks Pass for the same period in 2006.
- Because there are so many Forest Service and BLM sites that do not accept the ATB Pass, there is a virtual competition going on among them to encourage visitors *not* to purchase an ATB Pass but instead to purchase their local daily and annual passes, which they tout as a better value.

In Colorado and Utah, where BLM manages 32 million acres of public land and operates dozens of fee programs for day use areas, campsites, rivers, hiking trails, and OHV routes, the ATB Pass is not valid at any of them, because all the fees charged are either Special Recreation Permit fees or Expanded Amenity fees. Local managers are making sure area residents are aware of that, and steering them away from making an ATB purchase. “Here, it just doesn’t buy you anything,” according to Russ Von Koch, BLM Moab recreation branch chief, as quoted in the Grand Junction Daily Sentinel. “For the areas you like to recreate in for the upper Colorado River, please buy your pass [Special Recreation permit fee] in those areas so the funds can stay in those areas and be used in those areas,” said Grand Junction BLM spokeswoman Melodie Lloyd, in the same article.

The FLREA’s stipulations about ATB Pass revenue result in incongruities such as a family purchasing an ATB Pass from the BLM Moab office that is not valid at any BLM sites in the area, then using their pass to enter Canyonlands National Park, which accepts the pass for entry but gets no revenue from that family’s pass purchase. If that family then wants to go backpacking during their park visit they must pay an additional \$15 fee for a backcountry permit, which is not covered by the ATB Pass.

In sum, the ATB Pass, which was intended to simplify fee compliance and minimize cost for public lands visitors, has instead made paying fees more complicated and more expensive.

IX. Fee Retention: The Root of the Problem

The principal change 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 sounds like a good idea, since recreation fees stay at the site where they are paid. But the idea is fundamentally flawed.

By allowing local recreation managers to raise their own operating budgets, fee retention has fed fat bureaucracies in Washington, has diminished Congress’s oversight of agency spending, and has 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 specific guidelines as to where fees could be charged, and fees were prohibited except where they were 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.

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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 being 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 them as customers
- From being stewards of resources owned by all Americans to treating the lands they manage as agency property

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 re-direct recreation appropriations for other purposes.

According to FY2006 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 FY2007, 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.

Despite the inherent problems with Fee Retention, the agencies have collected fees far in excess of their actual needs. The Government Accountability Office found, in GAO Report 06-1016, that the FLREA has resulted in an unobligated balance of \$300 million in fee revenue balances. There is strong pressure on the agencies to spend these funds on something, whether there is a public need or not.

Fee Retention has created a strong incentive for local managers to charge more and higher fees, and for national managers to divert more appropriated funds into administration. Representative Richard Pombo, then-Chairman of the House Resources Committee, got it wrong when he said, about the FLREA, that: “This bill will put an end to fears that fees will be misused by federal land managers.”

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.

VII. Fee-based Recreational Funding Has Failed

When the FLREA became law, Congressional intent was expressed by Representative Regula, its House sponsor, in a press release:

“As passed by Congress, H.R. 3283 [FLREA] 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]**

These promises have not been fulfilled. Instead, fees have continued for all of the same areas and activities as under Fee Demo, more and higher fees are being added all the time, and fewer and fewer Americans are enjoying the benefits of their public lands. The Fee Demo/FLREA approach has driven a wedge between Americans and their public land agencies. We love our public lands, but we increasingly hate our public lands management agencies.

The state legislatures of California, Colorado, Idaho, New Hampshire, Oregon, and Montana, as well as the Alaska House of Representatives and hundreds of organizations, counties and individuals, have called for repeal of the Fee Demo/FLREA approach to federal public lands recreation policy.

A fee-based approach to public land management has been tried and it has failed. A new approach is necessary. Legislation for a new approach that corrects the problems with Fee Demo/FLREA will result in widespread support from individuals, organizations, and state and local elected bodies.

VIII. A New Vision For American Recreation Policy

A new vision for American recreation policy must encompass these concepts:

- Congress must commit to adequately funding our public land management agencies, including recreation operations, maintenance and trail budgets;
- Congress must limit agency use of congressionally appropriated recreation funding for administration and overhead to 25%;
- Congress must specify that administration policy regarding fees assessed for government services (OMB Circular A-25) does not apply to recreational use of public lands by individuals and families;
- Congress must commit to independently fund wildland fire fighting efforts and to restrict agency borrowing from recreation accounts for fire fighting activities;

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- Entrance fees must be restricted to National Park Service-managed areas only and capped at 2004 levels unless approved by Congress;
- Within NPS-managed areas additional fees can be charged for Expanded Amenity sites (campgrounds, developed boat launches) and optional transportation services only. When an entrance fee is in effect there can be no additional fees for: backcountry use, interpretive programs, required transportation services, visitor centers, drinking fountains, restrooms, or parking;
- Within non-NPS areas, allow fees only for sites that qualified under the Land and Water Conservation Fund Act such as developed campgrounds, developed boat launches and developed swimming sites;
- Special Recreation Permits can be required only for commercial users, group activities, and organized events, not for individual or family use;
- Where managers determine that permits allocating use must be required to protect resources or avoid crowding, such permits must be issued at no charge;
- Abolish the America The Beautiful Pass and reinstate the National Parks Pass at \$50.00 (increases to be approved by Congress). Reinstated the Golden Eagle Passport, Golden Age Passport and Golden Access Passport at their 2006 prices, increases to be approved by Congress;
- Provide for a 50% discount off the National Parks Pass for Honorably Discharged Veterans;
- Limit partnerships and management agreements with private and non-profit organizations to charging only for facilities that the managing agency is allowed to charge for;
- No fee merely for Parking, nor for access to designated Wilderness, Wild and Scenic Rivers, undeveloped camping, or trails.

What America needs is a return to a recreation policy that, to paraphrase the Land and Water Conservation Fund Act:

Preserves, develops, and assures accessibility for all Americans of present and future generations to such quality and quantity of outdoor recreation resources as are necessary and desirable for individual active participation to strengthen the health and vitality of the citizens of the United States.

America's public lands are a unique and precious legacy that must be continued and sustained for future generations. They are a legacy that is imperiled by the Federal Lands Recreation Enhancement Act.