

# Western Slope No-Fee Coalition

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Testimony

Before the Subcommittee on Public Lands and Forests

Committee on Energy and Natural Resources

United States Senate

Oversight Hearing On Implementation of the Federal Lands Recreation Enhancement Act  
by the USDA Forest Service and the Bureau of Land Management  
October 26, 2005

Mr. Chairman and distinguished members of the Subcommittee;

Thank you for the privilege of testifying before you today concerning implementation of the Federal Lands Recreation Enhancement Act by the USDA Forest Service and the Bureau of Land Management.

I am Kitty Benzar, co-founder of the Western Slope No-Fee Coalition, a coalition that has come to represent hundreds of organizations and millions of Americans nationwide in advocating for the continued tradition of public ownership and access to public lands.

Resolutions of opposition to fee-based access under the previous Fee Demo program were sent to Congress by the state legislatures of Colorado, Oregon, California, and New Hampshire. Thirteen counties in western Colorado alone, and dozens of counties, cities and towns across the nation as well as hundreds of organized groups had passed similar resolutions. State and local governments continue to oppose fee-based access to public lands under the FLREA. Since the FLREA became law on December 8, 2004, resolutions opposing it have been passed in the legislatures of Colorado, Oregon, Montana, and the Alaska House, by numerous counties, and are pending in several other states.

The WSNFC opposed passage of the FLREA and testified against it in the U.S. House Resources Committee because we believe that fee-based access constitutes a new tax, harms communities located near or surrounded by federal lands, unfairly limits public access, and subjects citizens to extreme criminal penalties. Prior to passage of the FLREA, we were actively working with committee staff in the House to find common ground on the issues surrounding public lands fees. The final language of the FLREA contains many loopholes and ambiguities that we believe open the door to implementation of fees outside of developed areas and place undue constraints on public access to public lands.

In a press release issued at the time the 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, 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]**

At the time of its passage we predicted that the Forest Service and BLM would use the weaknesses in the law to perpetuate and expand the broad fee programs that they had implemented under the Fee Demo authority. The agencies are pushing the limitations written into the law because of the perverse incentives the FLREA creates to maximize revenues at the public expense regardless of the limitations on fee implementation written into it.

The FLREA contains a number of provisions designed to protect free access. There are prohibitions on charging Standard Amenity or Expanded Amenity fees “(A) Solely for parking, undesignated parking, or picnicking along roads or trailsides. (B) For general access... (C) For dispersed areas with low or no investment... (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... (F) For use of overlooks or scenic pullouts. (G) For travel by private, noncommercial vehicle over any national parkway or any road or highway established as a part of the Federal-aid system...” [Section 803 (d)(1)]. It also states in Section 803 (e) (2) “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. Section 803 (f) (4) says that fee day-use “areas” must contain six minimum amenities: Designated developed parking, a permanent toilet facility, a permanent trash receptacle, interpretive sign or kiosk, picnic tables, and security services.

Early this year we launched a nationwide grassroots survey of Forest Service and BLM fee sites. We asked our members and supporters to visit fee areas near their homes, observe whether they comply with the provisions in the new law, and report to us those that are not in compliance. We then undertook to compile this information into a list of fee sites that are not in compliance with the FLREA. That list is now over 300 sites, and

more survey reports continue to come in as part of this ongoing effort. We have provided a copy of our survey report for each Member of this Subcommittee.

The survey results to date reveal a pattern of excesses in implementation of the law by the Bureau of Land Management and the Forest Service. The agencies have created a category of fees that was not authorized by Congress called “High Impact Recreation Areas.” They are charging fees at thousands of trailheads that provide access to dispersed undeveloped backcountry, and they are stretching the Special Recreation Permit authority to cover virtually any type of recreational activity. De facto entrance fees are controlling access to huge tracts of public land.

Our survey has found that non-compliant fee programs fall into three broad categories:

**1) “High Impact Recreation Areas” (HIRAs)**

The Forest Service and BLM are using a category called a HIRA that does not appear anywhere in the law. A HIRA is a group of individual sites with little or no federal investment that are collected together for the purpose of charging fees to access any of them. Under the guise of HIRAs, Standard Amenity fees are being charged for driving scenic byways, state highways, and county roads, for entrance to huge tracts of land, for access to dispersed backcountry, and for multiple sites with low or no federal investment. The language in the FLREA stating that a fee can be charged for an “area” with certain amenities but failing to define how large the “area” can be opened the door to HIRAs.

In Southern California, 31 HIRAs comprising almost 400,000 acres have been established on four National Forests.

At Mt Lemmon, on the Coronado National Forest in Arizona, virtually the entire 256,000-acre Santa Catalina Ranger District has been declared a HIRA and fees are being charged for picnicking, dispersed undeveloped camping, roadside parking, trailheads, and restrooms.

In my home state of Colorado, the Arapaho-Roosevelt National Forest has declared two HIRAs. The first is at Mt Evans, where Colorado State Highway 5 has become a toll road and entrance fees must be paid to the Forest Service in order to enjoy a scenic overlook, hike into a Wilderness Area, or simply drive on a state highway. The other is the 36,000-acre Arapaho National Recreation Area where entrance fees are charged for access to six trailheads, five picnic areas, and five boat launches.

Other examples of HIRAs are shown in our survey report. These “High Impact Recreation Areas” are not defined or authorized anywhere in the new law.

**2) Special Recreation Permits**

The FLREA authorized fees for Special Recreation Permits for “specialized recreation uses of Federal recreational lands and waters, such

as group activities, recreation events, motorized recreational vehicle use.” Under previous law, Special Use Permits were limited to large organized events, commercial activities on public lands, and guides/outfitters. Now, the Forest Service and BLM are stretching the term “specialized” to require Special Recreation Permits for a wide array of private, non-commercial activities. These SRPs are being issued for activities as *un-specialized* as a simple family hiking trip, an individual ride on an OHV or mountain bike trail, or access to wilderness areas by foot or horseback.

Unlike Standard Amenity and Expanded Amenity fees, which are authorized for use of *sites*, SRP fees are applied to particular *uses*, i.e. hiking, OHVs, climbing, or river rafting. The protections in the FLREA restricting the application of Standard and Expanded Amenity fees do not apply to SRPs.

Examples of excesses under the SRP authority include the Wayne National Forest in Ohio, where fees apply to more than 280 miles of OHV, mountain bike, and horse trails.

At Cedar Mesa in Utah, just a few miles west of my home, the BLM requires a fee for all hiking in 400,000 acres that includes 7 remote canyons and 11 trailheads. This is a completely undeveloped area that receives less than 10,000 visitors a year and has no maintenance backlog.

Both the Forest Service and BLM are requiring SRPs and charging fees for entry to designated Wilderness Areas that are completely primitive by definition. Examples include Boundary Waters Wilderness, MN (USFS), Aravaipa Canyon, AZ (BLM), Hoover Wilderness, CA (USFS), Paria Canyon Wilderness, UT/AZ (BLM), Alpine Lakes Wilderness, WA (USFS), and Mt Shasta Wilderness, CA (USFS).

SRPs are being used to bypass the provisions in the FLREA against charging for access to backcountry and dispersed undeveloped camping, for use of roads and trails, and for passing through without use of facilities.

### **3) Trailhead Fees**

At thousands of sites nationwide, citizens are being charged a fee to park their vehicle at a trailhead or simple staging area and go for a hike, horseback ride, or to use an OHV trail. The law prohibits charging a fee solely for parking, or for passing through a fee area without using the facilities, and many trail users simply park their vehicle and hit the trail without using whatever amenities may be present.

Examples of trailhead-fee areas include the White Mountain National Forest in New Hampshire, where a “Parking Pass” is required at 44

trailheads and river access sites. These fees control access to most of the Forest's backcountry.

In the Pacific Northwest, a pass is required at over 500 day-use sites, mostly trailheads, on twelve National Forests. On the Mt Baker-Snoqualmie National Forest alone, there are more than 100 fee trailheads.

In Colorado, winter recreationists at Vail Pass must purchase a pass before accessing 55,000 acres of backcountry by snowmobile, snowshoe, or cross-country ski, even though the parking area and toilet facilities are provided by the Colorado Department of Transportation as a rest area for travelers on Interstate 70.

Fee trailheads, whether developed or not, are being used to prevent free access to dispersed backcountry and undeveloped camping, and to charge for general access, all in violation of the FLREA.

The Forest Service and BLM are out of compliance in other ways as well. They have instigated new fees and permits at many sites and areas without establishing the mandatory Regional Recreation Advisory Committees called for in the FLREA. The agencies are also spending over the 15% limit on costs of collection through agreements with non-agency enforcement services. In some cases up to 30% of fee revenue goes for enforcement alone. GAO reports on the previous Fee Demo program revealed that the Forest Service was using millions in appropriated funding to administer fee programs, resulting in overhead costs exceeding 50% of fee revenue. In the BLM, administrative overhead comes from state and Washington office appropriated funding, minimizing any net gain from fees. High overhead costs continue under the FLREA, in spite of the 15% limit mandated in the law.

These documented excesses under their fee authority by the Forest Service and BLM cause special concern when viewed in the context of the severe criminal penalties for failure to pay FLREA fees. The law allows the agencies to charge either a Class A or Class B misdemeanor and specifies prima facie guilt for the driver, owner, and all occupants of a vehicle failing to display a required pass. Although first offenses are capped at a \$100 fine, they still create a criminal record, and subsequent offenses are subject to penalties up to \$100,000 and/or 1 year in jail. Despite the fact that many fees do not meet the requirements of the FLREA, a citizen who fails to pay a \$5 fee to hike into a Wilderness Area or ride on an OHV trail, or who does pay but fails to display the pass correctly, or who loans their vehicle to a friend or family member who fails to pay, risks a permanent criminal record and potential jail time.

The sponsor of the FLREA said that it would provide stronger protections for public access to public land than the Fee Demo program did, and compliance with the provisions of the FLREA was mandatory as of December 8, 2004. By now, the Forest Service and BLM should have dropped fees at thousands of Fee Demo sites. Instead, they continue to charge non-compliant fees nationwide. The BLM has not dropped a single one of their 97 fee programs, and in fact recently announced plans to add 38 new fee sites

in six states, without following the requirements for public participation specified in the FLREA.

In a June 2005 press release the Forest Service said, “All Forest Service units that charged recreation fees under the old fee demo program reviewed their current fee sites and determined whether or not their sites meet requirements as outlined under [the new law]. As a result approximately 500 day-use sites will be removed this year...” At that time we obtained the list of 480 sites referred to, and compared it to the list of over 4,500 Fee Demo sites the Forest Service had reported as in effect on December 8, 2004. Their claim that 480 sites were being dropped because of the new law turned out to be unsupported because more than half of those sites either were never listed as Fee Demo sites, were already closed, are within HIRAs that continue to charge fees to enter the larger area, will have fees reinstated as soon as planned improvements are completed, or for some other reason.

For example, the Rio Grande National Forest in Colorado listed eleven sites where fees were being dropped, but all are campgrounds that had been charging under Land and Water Conservation Fund Act authority, not Fee Demo. Six sites along the Paint Creek Corridor on the Cherokee National Forest in Tennessee had already been closed due to flood damage. Four sites on the Humboldt-Toiyabe National Forest in Nevada dropped their shoulder-season fees but retained fees during prime season when concessionaires operate them. The Squire Creek trailhead on the Mt Baker-Snoqualmie Forest in Washington had already been closed because its access road is washed out. For the Justrite Campground on Idaho’s Payette National Forest, the Forest Service comments state, “Fees were authorized for this site under RFD, with the intention of charging fees when improvements were made. They were not made, so fees were never charged. Site is being dropped from fee program for now.” So it never did charge fees, but there are plans for it to become a fee site in the future. On the Bridger-Teton Forest in Wyoming, the Bridge and Lynx Creek Campgrounds were listed as dropped sites with the comment, “We stopped charging a fee here several years ago.” Yet all of these were included in the 480 sites that the Forest Service claimed were Fee Demo sites that did not meet the new criteria. It is hard not to conclude that the Forest Service was deliberately misleading the public and the Congress with this list.

In Colorado, the Forest Service is citing the FLREA as an excuse to reduce services while implementing more fees. In Heeney, Colorado, 80% of the town turned out for a contentious meeting on September 11, 2005, at which White River National Forest officials announced that they are increasing entry fees at Green Mountain Reservoir while adding restrictions on OHV use and removing some toilet facilities and campfire pits. Campers will be required to bring their own portable toilets, carry out their human waste, and provide their own metal fire pans (\$100). In the Summit Daily News, White River National Forest Recreation Program Manager Rich Doak is quoted as saying, “In our development sites we’ve been told they need to pay for themselves, or we need to get rid of them.” The article goes on to say, “Doak 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

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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.'"

Mr. Doak's remark that "In our development sites we've been told they need to pay for themselves, or we need to get rid of them," reflects the fact that decisions on whether or not to charge fees are being driven by two similar agency policies, the Recreational Site-Facility Master Planning process (RS-FMP) within the Forest Service and the Cost Recovery doctrine in the BLM. These policies both call for recreational areas to be "sustainable" (i.e. profitable) and to have a marketable "Niche."

Under the Forest Service's RS-FMP, recreational sites, trails, campgrounds and roads are being graded as to their sustainability and Niche. Those that are not profitable (including unprofitable fee sites) will be closed to public use or in the case of a trail be allowed to grow back to their natural state. The BLM's Cost Recovery policy calls for much the same thing.

These doctrines are currently being incorporated into Forest Travel Plans and Forest Management Plans and into the Resource Management Planning process in the BLM. While Congress has vetted neither of these policies, they are being applied nationally with enormous implications for how the FLREA will be implemented and for the overall availability of diverse recreational opportunities on our public lands.

RS-FMP and Cost Recovery will certainly have a negative impact on local tourist economies as recreational opportunities disappear. They will definitely restrict public access to public land despite the fact that the agencies receive a vast majority of their funding from the taxpayer through Congressional appropriations. The implication is that most, if not all, recreational sites, areas, and uses must be profitable, through fees and permits, or they will be closed.

These policies conflict with the language in the FLREA protecting the public's right to access dispersed areas of public land and to use minimally developed sites without the burden of fees. The doctrine of "fee or close" represented by the RS-FMP and Cost Recovery leaves the agencies' ability to comply with the FLREA in question.

The Western Slope No-Fee Coalition also has great concern regarding the establishment and the effectiveness of the Recreation Resource Advisory Committees (RRACs) as called for in the FLREA. These RRACs are composed of 11 members mainly from various public land user groups and the outfitter/guide community. Their purpose is to advise the Secretaries of Interior and Agriculture on implementation, expansion or elimination of Standard Amenity and Expanded Amenity fee sites.

Whether or not it is appropriate for the agencies to implement a fee area should be guided by clear, concise legislation that spells out exactly what is allowed and what is not. Public representation through the RRACs should be limited to recommendations regarding amounts of fees and how those revenues might be best spent, not making recommendations or judgments as to what the law allows. The ambiguous and self-

contradictory language in the FLREA as written has already led to excessive fees on public land.

While the groups represented on the RRACs come from diverse interests, almost all are dependent on the agencies involved to continue with their particular activity on public land. These groups will have little leeway in weighing various proposals concerning fee implementation, and the agencies will have undue influence over the RRAC's recommendations. Over-riding Forest Service and BLM policies, such as Cost Recovery and RS-FMP, leave RRACs and RRAC members largely with only two choices for recommendations: to implement a fee program at any given site or have it closed to public use.

Further narrowing the RRACs' ability to make open recommendations to the Secretaries is the effort underway to limit the number of RRACs to be established nationwide in spite of language in the FLREA requiring one RRAC per state. In fact the Forest Service and BLM have spent much time and have held numerous "lessoning sessions" to try and limit the number of RRACs to one or two nationwide. That would severely limit local input on implementing access fees. Another approach being considered by the agencies is to have existing RACs serve as the RRACs called for in the new law, or to create recreation subcommittees of existing RACs. In either case, recreational interests and user/local input would be minimized.

The Federal Lands Recreation Enhancement Act never received a vote on the floor of the U.S. House of Representatives and was never introduced in or considered by the U.S. Senate. This major change in public land policy was enacted without public participation. Like Fee Demo before it, the FLREA creates incentives within the agencies to push the boundaries on not only what is allowed under the law, but also what is appropriate in terms of public interest.

We urge the distinguished Members of this Subcommittee to take decisive action to remedy the excesses and abuses in implementation that are occurring on our public lands and repeal the provisions of the FLREA that relate to the Forest Service, Bureau of Land Management, Bureau of Reclamation, and Fish and Wildlife Service.

Thank you for the opportunity to present these facts and observations about implementation of this law by these two agencies. I am available for any questions you may have.