



"a user group that appreciates the value of wilderness"

January 21, 2010

Carolyn Holbrook
Recreation and Heritage Resources Staff
U.S. Forest Service
1400 Independence Avenue SW Stop 1125
Washington, DC 20250-1125

Via e-mail

Dear Ms. Holbrook:

This letter is in response to the proposed policy change regarding concessionaire operated recreation sites published on December 1, 2009 in Federal Register notice RIN 0596-AC91. I will address the proposed rule change directly, but first wish to set the stage with several quoted statements, each of which has direct bearing upon the proposed action.

After presentation of these statements, I will explain their importance and then present specific objection to the proposed policy change. I request that these statements and our objections all become part of the formal record.

Statement One (Henry Kissinger)

The illegal we do immediately.
The unconstitutional takes a little longer.

New York Times, Oct. 28, 1973

Statement Two (Chief F. Dale Robertson, US Forest Service)

The Forest Service had this hang up about we wanted the concessionaires and people to come in and provide a recreation service to the public, but by God, they better not make a dime off of us. I changed that. I turned that around. ...

I got OMB involved. They gave me extra money. By the time Bush came on board, we had prepared a nice brochure on recreation strategy of the Forest Service. Nice colorful brochure that described all the things I'm talking to you about. And I got that to Derrick Crandall. Derrick's with the American Recreation Coalition. It was during the Bush- Dukakis (sic) campaign, and Derrik (sic) said get me the first copy of that, just right off the press. He said I'll get it in Bush's briefing papers, and he did. It was a nice colorful brochure, easy to read. And we got that in Bush's briefing book. He read it and he latched on to it, and throughout the Bush presidency he kept asking questions about how are we doing in our Outdoor Recreation Program, and he embraced it. Again, that's one of those little incidents that at the right time we came out with a colorful brochure about our new recreation strategy in the Forest Service, having a key contact with Derrick Crandall, who was in with the campaign people for Bush, and got it into his briefing book. The president was one of the first people to read our entire brochure and then remembered that through his tenure as president.

Interview given August 1999 discussing events that transpired in 1989

www.foresthistory.org/research/Robertson%20F.%20Dale%20OHI%20Final.pdf

Statement Three (Derrick Crandall, American Recreation Coalition)

Success in 1995 - and long beyond - will depend upon key leaders of the recreation community stepping forward to explain our ideas and our needs to our elected officials; upon companies that invite the newly elected Members of Congress to see smiling visitors on the forests this summer, served by federal and private partners working together; and upon the National Forest Recreation Association and others focused on the future and addressing challenges America faces as we enter the 21st Century. We're counting on NFRA to provide public policy leadership in Washington through the American Recreation Coalition and other organizations during this key period!

National Forest Recreation Association Winter Report 1994.

Statement Four (Chief Michael Dombeck, US Forest Service)

File Code: 2330/6230/6500

Date: February 25, 1997

To: Regional Foresters

Subject: Prohibition Against Displacement of Concessions Based On Recreation Fee Demonstration Project

I commend you for your Region's active participation in the Recreation Fee Demonstration. This unique authority is a good example of one strategy we need to carry out our mission in a quality manner with declining resources.

Another strategy is to encourage an expanding role for the private sector in delivering services in national forest settings. Use of concessions is a key tool for providing quality services with declining work forces and capital resources. ...

To ensure these approaches do not conflict, direction was established guiding selection of each demonstration project. Specifically, our direction is not to displace concessionaires associated with the execution of the fee demonstration test. Several of our trade association partners have contacted my office and members of Congress expressing their concerns that some areas are contemplating modifications of current concession permits, or even not renewing permits, to incorporate a site in the demonstration program.

We must continue to work with our service partners. From the beginning, we indicated we would not displace their operations during this test. Our partners trusted our word. They supported this authority in our local communities and with their congressional representatives. This is a 4-year test during which we will learn more about the potential of a fee system, and we should not disrupt our continuing support for providing services by private concession.

At the same time, both Congress and the Administration have identified the need to reduce the size and scope of Government. How we manage the national forests has shifted. We must effectively utilize our employees as program administrators and adjust to leaner Government...

Statement Five (Warren Meyer, National Forest Recreation Association)

Concessionaires continue to provide critical services to the public that the USFS is unable to perform due to reduced staffing or budgets, and in this role, we have developed a deep commitment to the resources we manage. Over 90% of every camping dollar spent at concessionaire facilities is put into operation at the facility itself. Typically 45% is allocated to labor costs to operate the facilities, 21% to maintain and clean the facilities, and 17% is assigned to trash hauling, electricity, and other utilities. Of the remainder, over two thirds actually is given to the USFS as a concession fee payment, money that is typically reinvested in the campground facilities. In almost every case, the amount paid to the public for the concession rights exceeds (and often greatly exceeds) the profit made by the concessionaire. In fact, if there is any lesson we can learn from recent recreation budget cuts in various state parks organizations, private operators are a critical

component to keeping recreation options open in tough budget times. Concessionaires typically operate facilities at the high standards the public expects but with much lower costs. And, under federal law, the USFS actually has more flexibility to spend user fees improving the facilities under concessionaire operations than it does when operating the campground itself.

In conclusion, the purpose of these fee pass changes was most definitely not to create a net fee increase to the public. The purpose, rather, was to provide new free use opportunities for pass holders while reducing future fee pressures on young families, all while still giving Seniors the types of camping discounts they have come to expect in most private campgrounds.

The National Forest Recreation Association represents and serves as an advocate for businesses offering quality outdoor recreation opportunities to the public on federal lands and waters across the United States. The Association provides an array of member services to the lodges, resorts, marinas, pack stations, youth camps, retail stores, restaurants, campgrounds, RV parks, winter sports areas, outfitters, tramways and other companies that comprise the membership.

National Forest Recreation Association Press Release, December 9, 2009

Statement Six (Warren Meyer, from his personal Coyoteblog)

**As many of you know, I am in the
business of privatizing public recreation.**

Sept. 2009 <http://www.coyoteblog.com/&cd=5&hl=en&ct=clnk&gl=us>

At this point we present for immediate background a newspaper article quoted in its entirety. The concessionaire quoted in this article, Chuck Shepard of Hoodoo Recreation is like Warren Meyer, a Member of the Board of the National Forest Recreation Association. This article describes the issue which Wild Wilderness believes is most directly responsible for the concessionaire rule change which is the subject of this comment. Immediately following this article are two quoted statements from Mr. Shepard.

News Article (July 13, 2009, <http://kohd.com/news/local/133967>)

Day Use Pass Confusion in the Deschutes National Forest

After complaints from at least five different groups, and confusion from many more, Hoodoo recreation will no longer charge for a day use pass in the Deschutes National Forest.

"Over the course of the first month there was a lot of confusion between what is a northwest forest pass site and what is a hoodoo day pass site," says Ronda Bishop with the US Forest Service.

From the beginning of the year until July 1st, about eleven campgrounds in the Cascade Lakes and La Pine State Park area required day users to have passes from both the Forest Service and Hoodoo, which maintains facilities there. Originally Hoodoo charged day passes to fund bathroom and garbage cleaning expenses. According to the Forest Service, pumping a toilet can cost up to four hundred dollars. Hoodoo recreation's CEO Chuck Shepard released a statement to KOHD News saying:

"Unlike the forest service we do not receive tax receipts for doing our upkeep. We felt it was fair to charge the day users for the costs of the day use sites rather than exclusively charging the campers for fees to recover our costs."

The Forest Service says High Lakes Recreation had no problem running the program last year. After users complained, the Forest Service decided only one pass was enough.

"We got together with hoodoo and talked about the confusion with the public, and made the decision that hoodoo would not charge a day use fee," Bishop says.

The exception of the rule is the Perry South Campground on Lake Billy Chinook; that still requires a Hoodoo day pass this year. Next year both Hoodoo and the Forest Service hope to re-negotiate terms where current fees will help pay costs for both.

Statement Seven (Chuck Shepard, CEO Hoodoo Recreation)

I don't know why the USFS feels the need to hold the fees lower than the market would say is reasonable. I don't believe that you would have any more complaints at \$14 than you would at \$8. In fact you will probably have more this way because campers will complain about how high the Hoodoo fees are assuming that they should (sic) at your level. Please do no (sic) hold your fees artificially low, this actually hurts the concessionaire model which I know that the national USFS is anxious to have work.

Letter to Dan Pavoni, Detroit Ranger District, Oct. 15, 2007

Statement Eight (Chuck Shepard, Board Member NFRA)

The Forest Service participants on the panel stressed the need for the Forest Service to be aware of the needs of the concessionaire and help them become profitable for long term stability. Much of the conversation stressed the need for the Forest Service and the concessionaires to work together as partners. When it was expressed from the floor that often concessionaires are treated like low level employees and that many of the Forest Service employees resent the thought of concessionaires making a profit, Gail [Vanderbie, Assistant Director of Recreation, Forest Service] admitted that there was work to be done getting the partnership attitude out into the field. However, Gail emphasized that "If you fail – we fail". She went on to say that it was a real mistake for the Forest Service to try to micromanage the concessionaires business practices.

There was some talk that the probable future in recreation will be longer contracts with more investment from the concessionaires.

Submitted By Chuck Shepard

Source: The NFRA Report September 2005
http://nfra.org/Documents/nfrarep_sep_05.pdf

It is the contention of Wild Wilderness that the proposed rule change is part and parcel of the commercialization and privatization of outdoor recreation that began with Chief F. Dale Robertson.

It is the contention of Wild Wilderness that at least portions of the proposed rule change are clearly illegal.

It is the contention of Wild Wilderness that the proposed rule change results from closed door meetings between the US Forest Service and various special interest organizations.

It is the contention of Wild Wilderness that the proposed rule change is a direct response to concessionaires whom the US Forest Service looks upon as "partners" and whose profitability the USFS seeks to increase.

It is the contention of Wild Wilderness that the Forest Service has greater allegiance to its partners than to the citizens of the United States of America and that when asked to choose between those competing interests as it has done with the proposed rule change, the Forest Services has chosen in favor of its commercial partners.

And finally, it is the contention of Wild Wilderness that the most important aspect of the proposed rule change is not the most obvious portion of the rule change. While we anticipate that the proposed changes to senior and disabled discounts will be the focus of most public comment, we believe that the proposed change regarding Standard Amenity Recreation Fees is vastly and profoundly more important. It is, in our estimation, so much more important that we might even speculate that this change was bundled with the senior and disabled discount issue so that it would effectively go unnoticed. We suggest that the most flagrantly illegal portions of the proposed rule change are associated with those provisions which deal with the charging of SARFs by concessionaires and with those provisions which permit concessionaires to NOT accept recreation passes legally authorized by the Federal Lands Recreation Enhancement Act (REA), as signed into law on December 8, 2004.

In addressing the points raised above, I wish to first quote from the Forest Service's own document titled "Threshold Regulatory Flexibility Act Analysis: Proposed Revisions to Forest Service Manual 2344.3, Campgrounds and Related Granger-Thye Concessions" dated November 04, 2009. It would seem that this is a companion document to the proposed rule change and thus is explicitly pertinent to any discussion of the proposed changes.

On page one, the document states.

The proposed directives would have four potential economic impacts on campground concessioners. The proposed directives would (1) increase gross revenue by decreasing from 50 to 10 percent the discount on camping fees campground concessioners are required to give to holders of Golden Age and Golden Access Passports and Senior and Access Passes; (2) decrease gross revenue by requiring campground concessioners to offer a 10 percent discount to holders of Golden Age and Golden Access Passports and Senior and Access Passes at standard amenity recreation fee (SARF) day use sites; (3) decrease gross revenue by requiring campground concessioners to provide free use to holders of Annual and Volunteer Passes at SARF day use sites; and (4) for existing campground concessioners who elect to amend their permits to include the new requirements in the proposed directives, increase the land use fee for the remainder of their permit term if their gross revenue increases by more than \$10,000 from the reduction in the camping fee discount....

On page 15, the document concludes with these words:

Based on the foregoing, the Forest Service has determined that the proposed directives would not have a significant economic impact on a substantial number of small entities because the proposed directives would not impose new record-keeping requirements on them; would not affect their competitive position in relation to large entities; and would not significantly affect their cash flow, liquidity, or ability to remain in the

market. To the contrary, the proposed directives generally would benefit small businesses that operate and seek to obtain campground concession permits by increasing their net revenue by 8.2 to 9.1 percent.

So while (to quote Mr. Meyer of NFRA) “the purpose of these fee pass changes was most definitely not to create a net fee increase to the public” the result of these proposed changes (to quote the USFS) “would benefit small businesses that operate and seek to obtain campground concession permits by increasing their net revenue by 8.2 to 9.1 percent.”

At which point we invite you, Ms. Holbrook, to reflect upon each of the statements presented above, for they are all applicable. Actually, we don’t so much “invite” you to review those statements in this light as request that those statements be EVALUATED as part of the formal review process.

With regard to specific proposed rule changes and their implication and relation to existing law, please consider the following:

1) The holders of Golden Age and Access Passports purchased or were issued them with the understanding that these passes were good for life. We acknowledge that REA provided certain, shall we say, “loop holes” by which the agencies could renege on that implied promise. The agency need only claim that it would be impracticable to continue to honor those obligations. We find it reprehensible that the US Forest Service has chosen to do so. The loop holes were trivial and the Forest Service must have worked hard to figure out how to deprive these citizens of the value of their lifetime passes.

2) REA states that the "America the Beautiful – the National Parks and Recreational Lands Pass" must be accepted at standard amenity sites (SARF). In contrast to REA, the proposed rule change " would require concessioners to offer a 10 percent discount to holders of Senior and Access Passes and Golden Age and Golden Access Passports for standard amenity recreation fee (SARF) day use sites that they operate; and would require concessioners to provide free use to holders of Annual and Volunteer Passes at SARF day use sites they operate."

At this point, the proposed rule change is not merely a reprehensible denial of implied privilege, it is flagrantly illegal.

Here are the pertinent sections of REA:

SEC. 5. RECREATION PASSES.

(a) America the Beautiful--the National Parks and Federal Recreational Lands Pass.--

(1) **AVAILABILITY AND USE.**--The Secretaries shall establish, and may charge a fee for, an interagency national pass to be known as the "America the Beautiful--the National Parks and Federal Recreational Lands Pass", which shall cover the entrance fee and standard amenity recreation fee for all Federal recreational lands and waters for which an entrance fee or a standard amenity recreation fee is charged.

(b) Discounted Passes.--

(1) **AGE DISCOUNT.**--The Secretary shall make the National Parks and Federal Recreational Lands Pass available, at a cost of \$10.00, to any United States citizen or person domiciled in the United States who is 62 years of age or older, if the citizen or person provides adequate proof of such age and such citizenship or residency. The National Parks and Federal Recreational Lands Pass made available under this subsection shall be valid for the lifetime of the pass holder.

(2) **DISABILITY DISCOUNT.**--The Secretary shall make the National Parks and Federal Recreational Lands Pass available, without charge, to any United States citizen or person domiciled in the United States who has been medically determined to be permanently disabled for purposes of section 7(20)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)(B)(i)), if the citizen or person provides adequate proof of the disability and such citizenship or residency. The National Parks and Federal Recreational Lands Pass made available under this subsection shall be valid for the lifetime of the passholder.

According to section 5(a)(1) the National Parks and Federal Recreational Lands Pass "shall cover the entrance fee and standard amenity recreation fee for all Federal recreational lands and waters for which an entrance fee or a standard amenity recreation fee is charged."

Thus with respect to entrance fees and/or standard amenity fees, the National Parks and Federal Recreational Lands Pass comes in, shall we say, four flavors; those being Senior, Disabled, Volunteer and plain vanilla. REA stipulates that with respect to entrance fees and/or standard amenity fees each of these flavors has the same nutritional value --- that being the value of free access. If you are a holder of the National Parks and Federal Recreation Lands Pass you shall be entitled to free access where entrance fees, or standard amenity fees are charged. This is a fundamental point that the proposed rule change has apparently failed to acknowledge and attempts to deny.

What differentiates these flavors is who may obtain a specific flavor and at what cost. In the case of the Senior Pass, the cost is being an American citizen who has reached the age of 62 and paying \$10. In the case of the Disabled Pass, the cost is being a permanently disabled citizen and proving that fact. In the case of

the Volunteer Pass, the cost is volunteering a staggering 500 hours. In the case of the plain vanilla "Interagency Pass", the cost is currently \$80.

The proposed rule changes propose a new fiction which is in violation of REA. In an Orwellian Animal Farm fashion it stipulates that some of the passes are more equal than others. Wild Wilderness contends that there is only one pass and that with respect to entrance fees and standard amenity fees (as stipulated in section 5(a)(1) the pass confers equal rights upon all passholders regardless if the cost be that of disability, dollars paid, days labored or years lived.

3) REA authorizes the issuance of Regional Multientity Passes and Site-Specific Passes. The Annual Northwest Forest Pass is an option for those who use recreational lands in Oregon and Washington. The Adventure Pass is an option for those who use recreational lands in Southern California.

According to the USFS website <http://www.fs.fed.us/r6/passespermits/nwfp.shtml> The Annual Northwest Forest Pass is "Honored at all Forest Service entrance or day-use fee sites in the Washington and Oregon region" and " Admits pass owner and any accompanying passengers in a private vehicle."

The proposed rule change says nothing about requiring concessionaires to accept The Annual Northwest Forest Pass, the Adventure Pass, or any other multientity pass or site-specific pass authorized by REA. On this matter the law provides no loopholes. And so we ask, on what basis is the Forest Service proposing to make such passes functionally worthless, at least worthless at recreation sites managed by concessionaires?

4) The proposed rule changes facilitate the wholesale privatization of recreational opportunities on Forest Service managed public lands.

The privatization agenda was the vision of President Reagan and was first implemented within the Forest Service under the direction of Chief Robertson. For the over 30 years, concessionaires have exerted pressure upon the agency to alter the way in which recreation is delivered to the American public. Their objective being to increase the profitability of private service providers operating both on and off the public lands. To do this they lobby to ensure that public sector recreation does not compete with private alternatives and to increase the cost of public recreation thereby permitting private recreation providers to charge still higher fees.

Persons required to speak in carefully measured terms (such as government employees) can admit to no more than Chief Dombeck admitted when he said: "We must continue to work with our service partners. From the beginning, we indicated we would not displace their operations during this test. Our partners trusted our word."

Those unencumbered by such limitations can freely state what we already know, namely that concessionaires are in "the business of privatizing public recreation."

So how exactly does the proposed rule change facilitate the wholesale privatization of recreational opportunities on Forest Service managed public lands? It does so by expanding the privatization options beyond those provided in Granger-Thye, by lowering the bar for the creation of new recreation fee sites and permitting concessionaires to charge for, and retain for themselves, fees paid at such sites.

Since F. Dale Robertson and Derrick Crandall produced their nice, easy to read, colorful brochure and comprehensive briefing book the majority of National Forest campsites have been turned over to private concessionaires who, in theory, pay a small fee for the privilege of being given the opportunity to run a profitable business using publicly owned properties, facilities and other assets. In practice, no concessionaire worth his salt remits one penny to the Forest Service. To the extent that concessionaires pay anything, they do so with Granger-Thye offsets. Their payment comes in the form of improvements made to the recreation facilities they have been permitted to operate.

Even without receipt of any cash payment, the Forest Service loves this arrangement. Privatizing management control absolves the agency from having to pay the costs of operating these recreation facilities. And because prior to the passage of the Recreation Fee Demonstration Program in 1996, the lion's share of camping fees could not be retained and thus used to pay for campground maintenance, outsourcing to concessionaires was seen as a convenient way to cut operating costs.

Fee Demo had the power to change that situation. Because Fee Demo authorized the local retention of recreation fees, the camping fees paid by visitors could actually be used to fund the maintenance and operation of Forest Service managed campgrounds. Some few caring USFS managers argued that Fee-Demo was not the privatization tool critics claimed it to be. They said Fee-Demo could prevent further privatization by permitting the agency to retain fees and thus operate its own campgrounds using this newly authorized revenue stream. Some of these caring managers went so far as to suggest that public campgrounds which had already been privatized could now be brought back within the fold and be operated by the Forest Service using retained camping fees.

Unfortunately, those caring and truly well meaning USFS managers did not appreciate, or perhaps did not know or remember, that Chief F. Dale Robertson had set the Forest Service onto a privatization course from which no deviation would be allowed. They did not understand that Fee-Demo, a program created by Free-Market ideologues and the American Recreation Coalition was intended to serve as a powerful new tool in the privatization toolbox. And so in direct response to isolated efforts to regain control of public facilities, Chief Dombeck wrote the memo quoted in Statement Four. The chief made it clear that the fee retention aspect of Fee-Demo was not to interfere with the exploitation of public

resources by the agency's "partners". Fee-Demo was not to interfere with the privatization agenda.

The proposed rule change which is the subject of this comment permits those same "partners" to advance the privatization agenda to the next higher level. Even with fee-retention authority, as provided for by REA, Forest Managers are now seemingly willing to turn the management control of day use sites over to concessionaires in an effort to cut costs. These Forest managers are seemingly willing to move still further from actually delivering services to the paradigm of managing the delivery of services by private corporations.

With the proposed rule change the privatization agenda moves beyond campgrounds. It shifts to the privatization of access by permitting private concessionaires to control access to day use facilities and, in many instances, to the lake, river, mountain or steam just beyond the controlled access point.

No longer will day use fees be retained by the management agency. No longer will the holders of the Annual Northwest Forest Pass be permitted access to public sites operated by private interests. No longer will the rights of those Seniors and the Disabled who hold Interagency Passes be honored: not when they are denied access to day use sites in direct violation of the law.

It's been almost four decades since Henry Kissinger pronounced: "The illegal we do immediately. The unconstitutional takes a little longer."

With the passage of REA in 2004, failure to pay a recreation fee was criminalized, and accused violators were judged guilty until proven innocent. Some would believe that unconstitutional.

The law (REA) reads, in part:

...The registered owner and any occupant of a vehicle charged with a nonpayment violation involving the vehicle shall be jointly liable for penalties imposed under this section, unless the registered owner can show that the vehicle was used without the registered owner's express or implied permission.

...The failure to pay a recreation fee established under this Act shall be punishable as a Class A or Class B misdemeanor, except that in the case of a first offense of nonpayment, the fine imposed may not exceed \$100, notwithstanding section 3571(e) of title 18, United States Code.

Ideology is a powerful driver and this proposed rule change is nothing if not ideologically driven.

We close with a second quote from the good doctor Kissinger. We present it exactly as originally stated, but ask that you and others in positions of authority mentally transpose a few words in order to make it directly relevant to this

comment on this proposal. Imagine if you will, that the crisis is of a financial nature and that Americans are being told that there isn't any money with which to maintain public recreation facilities. Imagine that the public is being told that without these changes, and without these fees, the Forest Service would have no alternative other than to close facilities and deny public access to the Great Outdoors. Imagine that the only alternative offered is the proposed rule change. And should you be unable to imagine all of these things, then please reread Statement Five. That is the News Release of the concessionaire's lobby (National Forest Recreation Association) prepared in direct response to this proposed rule change. It is signed by the National Forest concessionaire who, on his personal blog, proudly proclaims that he is in the business of privatizing public recreation.

Today Americans would be outraged if U.N. troops entered Los Angeles to restore order; tomorrow they will be grateful. This is especially true if they were told there was an outside threat from beyond, whether real or promulgated, that threatened our very existence. It is then that all peoples of the world will plead with world leaders to deliver them from this evil. The one thing every man fears is the unknown. When presented with this scenario, individual rights will be willingly relinquished for the guarantee of their well being granted to them by their world government.

- Henry Kissinger, May 21, 1992

Please place this letter in the administrative record and add our organization to the list of Interested Parties.

Sincerely,



Scott Silver
Executive Director