

WESTERN SLOPE NO-FEE COALITION
P.O. Box 135, Durango, CO 81302
www.WesternSlopeNoFee.org

Kitty Benzar
President, Western Slope No-Fee Coalition
Testimony
Before the Committee on Natural Resources
Subcommittee on Public Lands and Environmental Regulation
United States House of Representatives
“Citizen and Agency Perspectives on the Federal Lands Recreation Enhancement Act.”

June 18, 2013

Mr Chairman and Distinguished Members of the Subcommittee:

Thank you for the privilege of testifying before you today as you examine the implementation of the Federal Lands Recreation Enhancement Act. I am Kitty Benzar, President of the Western Slope No-Fee Coalition. These days I'm an unpaid advocate for public lands, but for much of my life I've been a businesswoman reliant on outdoor enthusiasts for my living. I have managed an outfitter/guide service in a National Park, owned and operated a campground/RV park, and run a 4WD vehicle rental service. I have also personally enjoyed many forms of outdoor recreation on public lands, and they are precious to me, as I'm sure they are to you and millions of other Americans.

The Coalition is a broad-based network of people with diverse recreational interests but a shared concern about the excessive financial barriers that have been erected under Fee Demo and the FLREA for access to federal public lands.

Fee Demo, the predecessor program to the FLREA, allowed the agencies to charge fees without limitation for any area or activity. Fee Demo was very unpopular, and my organization and others around the country originally formed in direct opposition to it.

The FLREA was supposed to address the problems with Fee Demo by placing limits and requirements on where, and for what activities, fees could be charged. As stated in a press release issued by the House Resources Committee Chairman at the time:

“This will put an end to fears that federal land managers cannot be trusted with recreational fee authority because we lay out very specific circumstances under which these fees can be collected and spent.”

I fear the Chairman underestimated the land management agencies' ability to maneuver between the lines of the statute. They have found many ways to continue pretty much as they did under Fee Demo. Indeed, there is not a single section of the FLREA that has worked as intended by its authors. After it was enacted in December 2004, very few fees were eliminated and there have been more than a thousand new and increased fees imposed since. The public has yet to reap the promised benefits of fees in the form of improved facilities, and the agencies continue to report growing maintenance backlogs. Instead of supplementing appropriated revenue, fees have supplanted it. Because appropriated funding is siphoned off into ever increasing agency

overhead, less and less dollars are making it to the ground. As a result, local managers are being forced to use fee revenue for day to day basic operations.

Today I'd like to share with you six examples of problems with the FLREA, as well as some ideas for what should be included in future legislation to replace it as it approaches its sunset date.

1. The Forest Service and BLM Are Evading The FLREA's Requirements And Restrictions On Their Fee Authority

The FLREA authorizes four types of recreation fees, with requirements and restrictions placed on each one. The restrictions include prohibitions on charging for general access or passing through Forest Service, BLM, or Bureau of Reclamation lands when no developed facilities and services are used. Despite these prohibitions, fees are being charged today for access to thousands of trails that lead through undeveloped backcountry, for access to rivers and lakes for undeveloped recreation, and for roadside parking and scenic overlooks – all of which are prohibited by the FLREA.

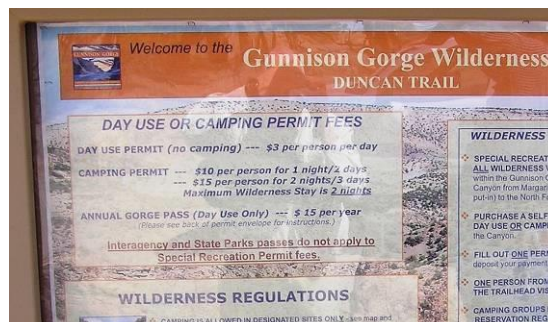
The Forest Service and BLM have justified these fees in one of two ways. Either they have installed amenities under the Standard Amenity Fee authority and then charged a fee for them whether they are used or not, or else they have declared all use of certain undeveloped areas to be a “specialized recreation use” under the authority of the Special Recreation Permit authority in the FLREA.

The “build it and they will pay” approach, favored by the Forest Service, has resulted in unneeded and excessive facilities being erected that add to maintenance backlogs, merely in order to justify charging a fee.



An unneeded picnic table gathers weeds at a trailhead on the Coconino National Forest. It was installed to meet the requirements for a Standard Amenity Fee, even though the site is not visited for its amenities, but because it provides access to undeveloped backcountry.

The Special Recreation Permit approach, used especially by the BLM, imposes fees not for “specialized recreation uses,” as the law says, but for all use of “special areas” – as defined by the agency – resulting in fees for access even to primitive areas and the categorization of something as simple as a family hiking trip as a “specialized use.”



All access to the Gunnison Gorge Wilderness in western Colorado (BLM) requires a fee, even though the area is completely undeveloped as a matter of law.

The FLREA authorizes Entrance Fees for National Parks and Wildlife Refuges only. These, along with Expanded Amenity Fees for developed campgrounds, have been the least controversial of all fees. However some National Parks impose additional fees for things that should be part of the core experience of a park, such as interpretive programs and backcountry camping. Those layered fees are excessive and should be discontinued.

2. The Public Participation Requirements In The FLREA Have Failed

One of the chief complaints about Fee Demo was its failure to give the public a voice in the implementation of recreation fees. The FLREA addressed this with a lengthy section on Public Participation that requires public support to be obtained and documented before new fees can be imposed or existing fees increased. It calls for the establishment of Recreation Resource Advisory Committees under the authority of the Federal Advisory Committee Act, to review and make recommendations on proposed fees. The RRAC process has proven to be cumbersome, inconsistent, expensive, and easily manipulated by the agencies to the exclusion of real public participation.

Five RRACs are chartered by the Forest Service, while seventeen existing BLM Resource Advisory Councils serve double duty as RRACs for areas under their jurisdiction. The Forest Service RRACs vary in jurisdiction from the Eastern RRAC, which covers 21 states, to the California RRAC, which covers just one. The BLM RRACs in Utah and Arizona each cover an entire state, while Idaho and New Mexico have four RRACs apiece. As a result of this inconsistency, some RRAC members are very familiar with local conditions while others are making decisions that affect places they know little about.

The BLM committees estimate in their charters operating expenses of \$50,000 per year each, while the Forest Service charter calls for between \$89,000 and \$117,000 per year per RRAC. These costs are, remarkably, not accounted for as direct costs of the fee program by either agency.

More important than this inconsistency and expense is the way that the agencies have manipulated the process. RRAC members are appointed by the agencies. They tend to represent groups or interests that are beholden in one way or another to the USFS or BLM; in other words if they don't go along, the agencies have ways of getting even. But because they are usually selected from among people the agencies already have a cozy relationship with, few RRAC members show any reluctance in approving virtually every proposal they see, even when evidence of general support is lacking. In fact many proposals have been approved even when the public comments demonstrate general opposition. In the rare instances when an individual has not voted to go along with the agencies, that person does not get re-appointed to the RRAC, or in at least one case resigned in protest.

Here are the RRAC decisions from 2007 to the present, based on meeting minutes:

Fee Increases Approved	New Fees Approved	Fee Proposals Denied or Tabled by RRAC	Fee Proposals Withdrawn by Agency
968	365	49	12

When more than 96% of proposals are approved, the process amounts to little more than a rubber stamp operation. Rather than embodying public opinion, RRACs are used to lend an air of legitimacy to fee schemes that would never survive an open public process.

3. Privatization Of National Forests Is Diluting the Value of Federal Recreation Passes and Competing With Private Enterprise

The FLREA established the “America The Beautiful” (ATB) Pass, and specifies that it covers Entrance and Standard Amenity Fees. The \$80 annual version of the ATB Pass replaced the popular National Parks Passport, which was a \$50 pass for entry to all the National Parks. The ATB Pass was envisioned as an upgraded Parks Passport that, for a small extra charge, would cover the National Parks and also most USFS and BLM fees other than camping. It was designed to address a frequent complaint that recreation fees were nickel-and-diming people. But on the National Forests, the ATB Pass confers few benefits because of rampant privatization.

The Forest Service has transferred half of its campgrounds, including 80% of the most highly developed ones, as well as many day-use facilities, to private concessionaires to manage. The Service takes the position that once a facility is under concessionaire management, the FLREA no longer applies there.

Under this interpretation, day-use fees charged by concessionaires are not Standard Amenity Fees as defined in the FLREA, hence ATB Passes do not have to be accepted to cover them. At day-use facilities all over the country that are owned by the American people and were built with federal funds, signs are popping up saying “Federal Passes Not Accepted Here.”

While Forest Service-managed sites must allow certain uses without a fee, private concessionaires are allowed to charge for anything. They are not required to accept federal passes and in fact are allowed to issue their own private passes for access to federal facilities.



Senior/disabled versions of the ATB Pass replaced Golden Age/Golden Access Passes, which had been in effect for over 30 years. Golden Passes guaranteed passholders a 50% discount on fees in developed campgrounds. The FLREA did not mandate this discount for senior/disabled ATB passes, but it did specify that Golden Passes have to be honored on their original terms “to the extent practicable.” As a matter of policy, the Forest Service has extended the 50% camping discount to holders of both Golden and senior/disabled ATB Passes and required their concessionaires to do so as well. Many passholders rely on this camping discount in order to be able to enjoy outdoor recreation on a limited income.

But because they are in business to make a profit, concessionaires see every senior and disabled pass as a direct hit to their bottom line. In 2010 they succeeded in convincing the Forest Service to propose eliminating the camping discount at concessionaire-managed campgrounds. [*Federal Register Vol. 229, No. 74, p.62736*] That proposal was met with fierce resistance by seniors and disabled veterans and was ultimately withdrawn by the Service, but concessionaires are still being allowed to refuse federal passes for day use of federal recreation facilities, which they increasingly manage.

The Forest Service creates new fee sites without public notice or participation by placing a previously-free facility into a concessionaire permit. Often these sites have been recently renovated and upgraded, at federal expense, before being privatized. It is also common for an agency-managed campground that was charging a modest fee to be renovated at taxpayer expense in order to attract bids from concessionaires, then transferred into for-profit operation at a higher cost to the public.

Forest Service officials frequently appear to place concessionaire profitability ahead of public good. One of the main benefits to the Forest Service under the FLREA is the ability to retain recreation revenue instead of sending it to the Treasury for appropriation by Congress. Fee retention, coupled with authority to charge for developed campgrounds and day-use sites, could provide an avenue for the forests to take back their recreation facilities and manage them so as to provide simple, basic services at an affordable price. They have chosen instead to privatize ever more recreation by transferring facilities to private entities, resulting in higher costs to the public.

Recently concessionaires have been pushing to expand their footprint on the National Forests even more, meeting with USFS and USDA officials behind closed doors to ask for 20 to 30-year permits, instead of the current 5 to 10, and permission to spend private capital on, and own private property rights in, things like utility hookups, wifi, in-season and on-site RV storage, cabins/RV/tent rentals, camp stores and new recreation offerings (like disc golf). While these things have a legitimate market, they belong on private, not public, land. It is not appropriate for federal recreational lands to be developed to meet this demand at the expense of, and in direct competition with, private sector enterprises.

4. Fee Program Overhead Costs Are Excessive

The FLREA mandates that no more than 15% of fee revenue be used for “administration, overhead, and indirect costs.” But the agencies play shell games with how expenses are categorized, attempting to show some semblance of compliance in reports to Congress, while actually spending far too much fee revenue – well in excess of the 15% limit – on the cost of collecting and administering fees.

A good example is the Red Rock Pass on the Coconino National Forest, a Standard Amenity Fee program. All Red Rock Passes are sold through third-party vendors; none are sold directly by the forest. Local businesses and the natural history association sell passes and keep 10% as a sales commission. The provider of automated pass vending machines scattered around the forest takes a commission on a sliding scale, averaging 48%. All together, sales commissions average 22% of gross revenue, before a penny of administrative or other costs are considered.



Vending machines like this one keep an average of 48% of the amount paid as a sales commission to the vending company.

The forest tells the public that 95% of the fees they pay stay on the Red Rock Ranger District. That is very misleading, because they get 95% only of the 78% the forest nets after commissions. The district actually receives only 74% of fees paid, and out of that must pay administrative, overhead, enforcement, and other costs, leaving very little to actually benefit the public.

Another example is the fee program at Imperial Sand Dunes Recreation Area in southern California, managed by the BLM El Centro Field Office primarily for OHV recreation. BLM

uses a contractor to administer the implementation of the fees, which averaged about \$2.5 million annually over the past three years. Over the same period, payments to the fee contractor averaged almost \$900,000 per year, or about 36%. So the BLM receives only 64% of fees paid, and from that must first pay their overhead and administrative expenses, leaving precious little to spend on improvements or deferred maintenance.

As described previously, the cost of operating the RRACs is not accounted for as an overhead cost of the fee programs by either the USFS or BLM, even though their sole function is to review fee proposals.

The most recent GAO report on recreation fees (GAO-06-1016) identified several serious financial issues and called for routine audits of all recreation fee programs. But such audits are still extremely rare, leaving fee revenues highly vulnerable to waste, fraud, and abuse as well as casting all claims regarding overhead expenses in a dubious light. On the National Forests and BLM lands, fees charged under the FLREA have failed to produce the promised public benefits and have resulted in little net revenue to the agencies.

5. Recreation Fees Are Bad For The Economy

Public lands are often touted as economic engines, and it's true. When people go to the public lands for recreation they purchase groceries, gas, sporting goods, lodging, guided tours, outfitting services and more. Struggling rural communities, especially, need these visitors. Anything that dissuades people from outdoor recreation hurts their economies.

The explosion of recreation fees began in 1997, under Fee Demo. The Forest Service was then claiming 800 million visitors a year and headed toward a billion. The BLM reported 60 million recreation visits. They justified the need for directly retained recreation fees as a way to deal with this onslaught.

But a funny thing happened on the way to the future. As the Forest Service started to get better measurement tools they discovered their visitation was only about a quarter of what they thought, and it has been on the decline with each successive report.

BLM recreation visits dropped to as low as 51 million in 2001, and although making a slow recovery they have stayed stuck well under the 60 million per year they were in 1997, despite population growth in the neighborhood of 15% since then.

Although the land management agencies deny that fees are a deterrent to visitation, they offer occasional fee-free days in an attempt to lure people back. It's only common sense: as the price of outdoor recreation rises, people turn to other alternatives. That hurts local economies, but most of all it hurts the American people when they are dissuaded from active outdoor activities and contact with nature.

6. The Revenue Is Concentrated In The Park Service; The Problems Are Concentrated In The Forest Service and BLM

The most recent report to Congress showed that of the three-year average fee revenue of about \$260 million, \$171 million or 66% of it was collected by the National Park Service. The Forest Service collected an average of \$65 million, or 25%, while the BLM collected only \$17 million, or 6.5%. The Bureau of Reclamation and Fish and Wildlife Service combined collect only a negligible amount. Most fee revenue, by far, comes in as National Park entrance fees and sales of national passes, 83% of which are purchased from the National Park Service.

The bulk of recreation fee revenue is generated by the Park Service, yet the problems I have described by and large relate to the Forest Service and the BLM. These two agencies have long waged a campaign with Congress and the public to be treated just like National Parks. But by their irresponsible use of the recreation fee authority given to them by the FLREA the Forest Service and BLM, instead of elevating themselves to the same level as National Parks are instead dragging the Parks down.

National Forests and BLM lands are not National Parks, and the American public knows that. The National Parks are where we go for our summer vacation or that dream rafting or backpacking trip of a lifetime, or that long cross-country road trip.

The National Forests and BLM are where we go for a Saturday afternoon walk in the woods, take our kids fishing or hunting, walk the dog, or ride our horse, mountain bike, or OHV.

Especially in the west, we live surrounded by National Forests and BLM lands. Having to pay a fee just to visit them amounts to having to buy a pass to leave the city limits. That is wrong, and it was one of the chief complaints about Fee Demo. Congress understood that and agreed; it's why they enacted the FLREA. But the Forest Service and BLM have acted to subvert congressional intent. Their fee authority should be uncoupled from that of the NPS and much more strictly constrained.



Fees like this one, for general access and roadside parking in a National Forest in New Hampshire, are prohibited by the FLREA, but are still being charged.

Congress Must Re-Commit To Public Lands

The Federal Lands Recreation Enhancement Act is due to sunset at the end of next year. If Congress does not act *this* year, the agencies will not have authority to offer a full year of benefits to purchasers of annual America The Beautiful Passes, which would be a \$20 million hit to the available funds for the Park Service alone. So time is of the essence.

There are three choices before you: renew the FLREA as is, allow it to sunset, or replace it with a law that works better for both the agencies and the public.

If you renew it, all the problems I've described will continue to worsen. If it sunsets, there will be no statutory restraint on recreation fees at all. I urge you to start now to replace the FLREA with a better law. I believe that such a law is possible, and absolutely necessary.

In considering legislation to replace the FLREA, Congress should re-commit itself to these principles:

That all Americans and visitors must have access to healthy and active outdoor recreation activities and other benefits offered by a system of federally managed lands.

That recreation fee programs must take into consideration that federal lands are public lands for which other funds are made available by Congress and fees are not intended to cover the entire cost of recreation management.

That recreation fees are supplemental to funds provided by Congress and should only be imposed where there is a demonstrated need to provide supplemental benefits; thus fee revenues should be expended to directly benefit those who paid them.

New legislation should ensure that

- fees are focused on use of developed or specialized facilities for which there is a demonstrated need;
- entrance fees are limited to National Parks and Wildlife Refuges;
- concessionaire fees are governed by the same requirements as agency fees;
- fees for special uses are carefully defined and never applied to private, non-commercial use of undeveloped or minimally developed areas; and
- ironclad agency financial accountability is established.

The Federal Lands Recreation Enhancement Act has failed to rein in Forest Service and BLM over-reach, thwarting congressional intent. It is time for Congress to take a hard look and a new approach, and I thank the Subcommittee for beginning that process today.