

Testimony
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Impediments to Public Recreation on Public Lands
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Mr. Chairman and members of the Committee, thank you for giving me the opportunity to testify on some of the critical issues which threaten recreation access on public lands throughout the United States. America Outdoors Association represents the interests of more than 1,000 outfitters, guides and outdoor recreation service providers who are members of our association and our affiliate state organizations. Most of our members provide services to the public in National Parks, National Forests, on BLM lands, including units within the National Landscape Conservation System, and in U.S. Fish and Wildlife Service Refuges.

Please accept my sincere appreciation on behalf of outfitters and guides for your concern about the future of recreation and outfitted services on public lands.

Why Recreation Access May Soon Contract on Public Lands

I believe we are facing the potential for contraction of recreation access for the general public unless the Congress and agencies work together with the recreation community to resolve critical, emerging impediments to authorizing and facilitating recreation activities on public lands. My testimony will cover several broad areas that I believe will inevitably lead to this contraction unless action is taken.

The Cost of Recreation Management as a Barrier to Recreation.

Agency processes for planning and authorizing outfitting and other recreation activities are becoming more complex and expensive. The trend is especially notable in congressionally designated areas within National Forests, National Parks and the BLM's National Landscape Conservation System (NLCS). On the other hand, some users are not managed at all at some resources so the impacts and costs for recreational use unfairly falls on those who are permitted and regulated.

If these trends continue, the processes for managing outfitted use in some congressionally designated areas will no longer be sustainable and will lead to contraction of recreation access. The costs for the more complex analyses required to authorize recreation activities cannot be transferred to users, especially in outfitting which is a low profit-margin business. Those processes have to be streamlined. Because agencies are diverting funding from recreation management to other programs, the capacity for new recreation activities is very limited.

With a new swarm of congressional designations under consideration, we believe that advocates and the Congress should consider the impact that the required management processes will have on use and enjoyment of these designated areas.



1. The National Landscape Conservation System Does Not Advance Outdoor Recreation.

The Bureau of Land Management's (BLM) National Landscape Conservation System (NLCS) includes all congressionally designated areas and other lands such as Wilderness Study Areas (WSA's). The NLCS was authorized in 2009 to conserve landscapes for scientific, cultural and ecological values.

Overnight, the NLCS went from "working landscapes" to educational preserves. Recreation and outfitted recreation activities are not an emphasis on NLCS lands unless the congressional designation makes recreation a purpose and management plans specify recreation management areas (RMA's). We suggest some legislative adjustments to the BLM's NLCS authorizing language to give recreation a higher status.

We have concerns that the requirement for a science plan for NLCS units and aggressive strategies to engage and educate youth, while noble in their intent, are not fully funded and could divert funds needed for recreation management which will further depress access.

Remarkably, the BLM Manuals and Handbooks for management of the vast NLCS lands were issued without public comment. We believe Congress should require those policies to be re-issued and make them subject to public comment. The importance of understanding these management regimes prior to additional congressional designations of BLM lands cannot be understated.

I respectfully submit that Congress should carefully consider the following issues when designating BLM lands, which are automatically part of the NLCS:

- Where appropriate future designations should ensure that the recreational values of those resources are specifically recognized as a purpose in the legislation;
- Where wilderness is designated, a provision which recognizes outfitted services as "necessary" should be included. Senator Udall's draft for the Brown's Canyon National Monument does that with the following language: "(2) OUTFITTING AND GUIDE ACTIVITIES.—Consistent with section (d)(5) of the Wilderness Act (16 U.S.C. 1133(d)(5)), commercial services (including authorized outfitting and guide activities) are authorized in the Wilderness to the extent necessary for activities that fulfill the recreational or other wilderness purposes of the Wilderness." The agency will still be required to develop a new management plan and complete capacity analysis to determine "the extent" to which outfitted services are "necessary".
- Senator Udall's draft for the Brown's Canyon National Monument authorizes planning for specific recreation activities within the Monument and excludes the Arkansas River, one of the nation's most popular whitewater rafting rivers, from the Monument boundaries on each side of the river. The State of Colorado retains management authority over commercial rafting on the river. This strategy represents one way to eliminate the potential impacts on access of the monument designations. While state management is appropriate for the Arkansas River, not every state is capable of managing a significant recreation resource on federal lands.

2. Excessive Analysis in the Forest Service as an Impediment to Recreation Activities

The Forest Service described the torpor that results from "excessive analysis" when they concluded in 2002 that "These factors frequently place line officers in a costly procedural quagmire, where a single project can take years to move forward and where planning costs alone can exceed \$1 million. Even



noncontroversial projects often proceed at a snail's pace." (The Process Predicament, USDA Forest Service, June 2002, page 5).

In National Forests these processes have become more complex over time as a result of court rulings and agency rule-makings which extend NEPA compliance to even the smallest permit decision. For example, some rangers feel it is necessary to complete a two-year "need" assessment and NEPA compliance to make a decision as simple as moving 300 or 400 service days in wilderness from the fall to the summer.

Before a new recreation permit is issued for a significant new activity or a level of use changed, the Forest Service may have to:

- determine if the recreation activity and extent of use is authorized in the Forest plan and, if not, amend the plan and comply with the National Environmental Policy Act (NEPA) by completing NEPA documentation;
- assess the "need" for the commercial recreation services, a process which is not well defined by the agency and more likely to be directed by the Courts, especially in designated wilderness where the Forest Service must determine the extent of outfitted activity allowable and its impact on wilderness values in addition to the need for the services consistent with The Wilderness Act;
- complete an elaborate capacity analysis;
- complete site specific NEPA analyses upon reviewing the permit application, which for some permits, may require an environmental assessment or a full environmental impact statement;
- engage the Fish and Wildlife Service or National Marine Fisheries Service in Section 7 consultation and complete various biological assessments related to the impact of the permitted activities.

One recent example of how extensive documentation can be in National Forests is the 10-year process to issue six (6) permits for pack and stock use in the Okanogan-Wenatchee National Forest. The Final EIS (FEIS) was nearly 700 pages in length to enable these outfitters to provide services to approximately 1,200 people per year. This extensive analysis was driven by fear of lawsuits by those opposed to outfitted use, which totals about 10% of overall use of the wilderness. The FEIS was preceded by a study to determine if the services were "necessary" during which users were surveyed. We appreciate the Forest Service's efforts to authorize this use, but realize this is not a sustainable process if it has to be repeated in most National Forests. Fortunately, cost recovery was not applied in this instance because the process began long before cost recovery was authorized and it was simply not affordable.

3. Re-examining Visitor Use and Capacity in National Parks

Legal challenges have greatly impacted recreation access in some National Parks and National Forests. Equine activities are especially vulnerable to these attacks. For example, equine activities have been eliminated in Grand Canyon National Park and are under threat in Yosemite and Yellowstone. Lawsuits were filed over equine activities in National Forests in California and Idaho.



In 2012 Congress had to pass the Sequoia and Kings Canyon National Parks Backcountry Access Act (H.R.4849) to enable NPS to issue permits for historical horse pack trips after a lawsuit successfully blocked their issuance in designated wilderness. The Court agreed with the plaintiffs that NPS had not adequately assessed “the need” for those services in the wilderness. The plaintiffs also charged that the trips used items that were unnecessary for the enjoyment of wilderness, such as tables, chairs and other “luxury” items.

Other commercial services are also under greater scrutiny. The court ruling in the lawsuit over the re-development plan to restore flood-damaged facilities in Yosemite National Park now requires NPS to establish a numerical carrying capacity consistent with the Wild and Scenic River designation for the Merced River, which flows through an area with historic facilities and recreation activities. Recreation activities are being eliminated if they are deemed to be inconsistent with the Merced’s designation. This 9th Circuit ruling rippled through NPS as the agency became sensitive to any uses which were not backed up by planning documentation. The ruling also impacted Wild and Scenic River management in other areas resulting in restricted access at rivers in National Forests in northern California and Idaho where carrying capacity had not been an issue.

An internal 2008 briefing from the NPS planning division addressed the issue of “Visitor Use and Capacity Planning and Management” by describing the broad impacts of the Yosemite Court decision.

“The Yosemite litigation emphasizes the complexity and conflict inherent in visitor use and capacity management, and the increasing debate over the “right way” to balance visitor opportunities and resource protection goals. Yosemite is not alone. There are many other costly lawsuits and political battles being waged over visitor use and capacity management-related issues, such as river use in Grand Canyon, equestrian recreation in Sequoia, off-road vehicle use in Cape Hatteras, and dog walking in Golden Gate National Recreation Area, to name just a few.” (Briefing Statement, Visitor Use and Capacity Planning and Management, March 2008).

NPS units have to complete an array of plans to accommodate visitors. Among the plans that may be necessary to authorize recreational use are: General Management Plans, Special Resource Studies, Commercial Services Plans, Resource Management Plans, Wilderness Plans, and Transportation Plans.

4. Management Streamlining Strategies

We understand and appreciate the many conflicting demands placed on federal land managing agencies. However, despite all the challenges, many areas manage to get things done by defensibly authorizing use without spending years preparing documentation. The best practices within each agency to facilitate recreation access should be identified, encouraged and used as a basis for facilitating recreation access rather than eliminating it. The BLM appears to have developed a successful strategy in some areas by using Programmatic Environmental Assessments combined with needs assessments.

The National Park Service and Forest Service documents at one point recognized the need for legislative changes regarding their planning processes. The NPS Briefing Statement suggested the agency, “evaluate the need for amendments to legislation or notice and comment rulemaking to



reflect a broader and more comprehensive definition and related best practices on visitor use and capacity management”. The Forest Service report from 2002 stated, “The need for so much planning is questionable. For example, much of the environmental information that the Forest Service collects is of dubious scientific or practical value. Although it might be needed to meet procedural requirements or to withstand appeals and litigation, resources spent on process cannot be put to other uses. The opportunity costs alone—which might range into the tens of millions of dollars—suggest a fundamental lack of efficiency and effectiveness in national forest management. “

One concern we have in proposing these necessary changes is that Congress not exempt certain groups and establish double standards for documentation and regulation. For example, the 1998 Concession Reform legislation exempted non-profit entities from the requirement to have a commercial use authorization to provide commercial services in National Parks unless the activities produce taxable income. This double standard is not appropriate and makes it harder for taxpaying businesses to compete when providing similar services. America Outdoors Association has nonprofit members and we understand and respect their role in providing educational services to the public. Some of them do not agree with this exemption in National Parks.

5. The Public Cannot Be Expected to Pay More for Less.

Some agencies are diminishing access, which they claim is necessary as a result of budget cuts. More reports surface each day detailing access and campground closures, which seem to be more prevalent within National Parks. These negative reports alone could depress visitation to National Parks this year. NPS may be surprised to find fewer visits are used to justify even deeper cuts. Here are some examples from press reports:

- Delaware Water Gap National Recreation Area has closed two important public access points at Milford and Kittatinny Point which some canoes liveries estimate will cost them between 25% and 50% of their business. These closures eliminate a float trip on the river that is popular with families. The Superintendent says it is too expensive to collect the garbage in those areas on weekends.
- Cuyahoga Valley National Park is reducing visitor center hours, education programming, restroom cleaning, trail maintenance, and mowing.
- The Great Smoky Mountains National Park closed five campgrounds and picnic areas, and reduced road maintenance.
- Yellowstone National Park delayed road openings, reduced staffing, and delayed access to Grant Village and Yellowstone Lake, although some of these closures may have been rescinded.
- Glacier National Park says they will delay plowing Going-to-the-Sun Road, the only road providing access to the entire park, which impacts visitors and concessioners’ services.

Most businesses in America had to absorb a 5% decline in revenues during the latest recession but few cut-off services to the public to accommodate the decline. Agencies should look at opportunities to improve their efficiency instead of cutting access and services to the public. Streamlining documentation requirements and reviewing organizational structures for duplicative programs are two strategies that might yield some savings.



6. Cost Recovery Will Not Solve the Process Problem.

Both the Forest Service and the Bureau of Land Management have a cost recovery regulation designed to fund the cost of environmental analyses and permit administration when the time required to process a special recreation permit exceeds 50 hours. The BLM appears to be the leader among agencies in streamlining processes, such as the use of programmatic Environmental Assessments. The Forest Service, on the other hand, seems to be increasing process requirements and initiating cost recovery more aggressively. If fully implemented in both agencies, cost recovery will eliminate many outfitted services, especially in designated wilderness, on NLCS lands, where threatened or endangered species are present, or where social conflicts require the agency to engage in higher levels of National Environmental Policy Act (NEPA) compliance.

We have proposals to amend the Forest Service and the BLM's cost recovery authority which expires in September of this year, which we ask the committee to consider.

- If a permitted use has been ongoing for a number of years and there are no significant changes to the use or the resource, categorical exclusions for NEPA compliance should be authorized.
- Compliance with the Endangered Species Act should not be subject to cost recovery for existing permits.
- Programmatic EA's are another strategy BLM is adopting with success in some areas to eliminate the cost recovery requirement.
- Eliminate the needs assessment requirement in non-wilderness areas.

These changes could be included in the reauthorization of the Federal Lands Recreation Enhancement Act.

7. Unrealistic Restrictions Imposed by Wilderness Management.

Restrictions on group sizes in wilderness areas are increasingly limiting access for groups and commercial parties. We understand the need to have some limitation on group size in wilderness. However, limits on groups to as few as five (5) or six (6) persons in some wilderness areas eliminate families, social and outfitted groups from using the wilderness. Group size restrictions may expand to wilderness study areas (WSA's) in the NLCS and in the backcountry eligible for wilderness in National Parks, according to agency policies, which suggests that those areas must be managed as wilderness. Activities which might not be suitable under a wilderness designation are discouraged by the BLM's NLCS Manual for WSA's. These restrictions should be considered before extending a wilderness designation to a recreation area that is popular with groups.

The primary motivation of group size limitations is to manage wilderness to provide for "outstanding opportunities for solitude or a primitive and unconfined type of recreation", one of the four mandatory requirements for managing wilderness, according to the BLM Manual on Management of Wilderness (BLM Manual 6340, page 8,9).

- Group size restrictions vary from wilderness to wilderness, but can be as low as five (5) or six (6) people in the most restrictive wilderness areas.
- Within National Forests ten (10) is the most common group size limit, a restriction found in 63 wilderness areas.



- 30 wilderness areas in National Forests limit access by the total number of “heartbeats”, meaning people and stock. 12 heartbeats per group are allowed in 18 wilderness areas.
- The upper limit is 25 heartbeats (or people and stock) per group found in 23 wilderness areas.

For some outfitted trips, a group size of eight (8) to ten (10) is appropriate, such as hunting parties, which require a higher guide to guest ratio. But higher group sizes are usually necessary to make rafting trips affordable and cost effective.

The expansion of the need assessment requirement for commercial services in designated wilderness has also created unnecessary log jams in the authorization of outfitted services. Agencies must determine the need for commercial services through an ambiguous process before permitting outfitted activities. Now, need assessments, which the agency does not have the funding to complete, are being implemented in some Forests, suppressing new outfitter permits, another example of mushrooming agency processes. Permits for new activities are rare in National Forests because the agency field staff can’t jump through all the hoops to issue permits.

To overcome the need assessment hurdle any future wilderness designations should establish in the authorizing legislation that historic outfitted activities are “necessary” to fulfill the recreational purposes of The Wilderness Act. At some point Congress may wish to consider an alternative to wilderness designations to give agencies more freedom to authorize recreation activities.

8. Reauthorizing and Amending the Federal Lands Recreation Enhancement Act

Recreation access will contract even more dramatically unless The Federal Lands Recreation Enhancement Act (FLREA), which expires in 2014, is amended and reauthorized. FLREA is the authority for issuing outfitter and guide permits in National Forests, on BLM lands and within U.S. Fish and Wildlife Service Refuges. Without reauthorization, the agencies will have to find some other authority but the fees generated by permitted activities will not be retained. Recreation fees are supposed to be retained to support recreation activities where they are collected, although that does not always happen. While FLREA should be reauthorized, that reauthorization should not occur without changes.

- Lack of accountability for use of the fees is a problem in some areas. We believe, because we have reports from field staff, that the fees are being spent inappropriately at some sites. A portion of the fee money should be used by Congress to conduct random or targeted audits of agency expenditures of fee revenues at fee sites.
- Permit fees should be applied to permit administration. However, a limitation on that authority is needed to prevent the agency from using it to impose crippling fee burdens. We believe the fee structure should be standard across the agency as it is now and any changes subject to comment. Administration of amenity fees should be separated from other recreation fees.
- The current FLREA law authorizes the agencies to go into the concessions business, to run reservations services, rent cabins, rent equipment and to offer specialized tours. This authority should be altered to allow agency-provided services only when they cannot be provided by the private sector or when they are part of the agency’s core mission.



- Congress should consider authorizing non-profits to collect donations from users and others to support recreation activities and the goals of FLREA in lieu of agency-collected amenity fees where the non-profit can use fees more efficiently. These entities may accept outside contributions as well as be responsible for cost effectively collecting donations from recreation users. The overhead associated with the operation would have to be limited to ensure appropriate use of the funds and some limitations on advocacy established. While this option will not work everywhere, there are examples of workable strategies which should be considered.
- Rather than permanent authorization, we believe it is better for FLREA to sunset every 10 years so that it can be adjusted when needed. We also strongly urge this committee to write a model bill this year. An extension is necessary if a bill cannot be passed in this session.

9. Road and Trail Infrastructure Degradation.

There is no question that new strategies are needed to maintain the road and trail infrastructure on public lands. Beetle kill and fires have resulted in dramatic degradation of the trail infrastructure especially in National Forests and on BLM lands. Wilderness lands are among the hardest hit because mechanized equipment cannot be used to clear trails. Outfitters are often required to open up trails prior to the start of each season with crosscut saws, a task which has become overwhelming after winter blow downs block public access. Agency trail crews often arrive too late in the season or are simply understaffed to get the work done. Outfitters are reporting that secondary trails are being abandoned forcing more use on to mainline trails, which will undoubtedly result in someone complaining about overuse. Other witnesses at the hearing will testify to the magnitude of the problem in their areas.

We have suggested some strategies to facilitate maintaining these trails.

- A portion of the fees generated by FLREA was intended for agency-wide use although the agencies have the flexibility to retain all the fees locally. A portion of agency-wide fees could be used for trail maintenance and river access to reimburse the Forest for fee credits given to outfitters which would be deducted from their annual fee bill. Revenue from the account could also be used to support volunteer groups and other entities to clear trails. The money would have to be held in a special account for trail maintenance to avoid its diversion.
- Some authorization for limited use of chain saws in wilderness may be necessary to open up impassable trails and rivers to protect the public from dead fall and strainers.
- One concern is that a road use fee will be applied exclusively to permit holders when FLREA is reauthorized, even though outfitters are often the minority users of Forest and BLM roads. If any road use fees are approved, they should be broad-based and include all users of those roads.

Thank you for this opportunity to submit testimony and for your attention to outdoor recreation on public lands.

