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Hearing on H.R. 3283
The Federal Lands Recreation Enhancement Act
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Mr. Chairman and members of the committee, thank you for giving me the opportunity to testify on H.R. 3283, The Federal Lands Recreation Enhancement Act. America Outdoors represents the interests of more than 1,200 outfitters, guides and recreation service providers who are members of America Outdoors and our affiliate state organizations operating in 43 states. The majority of these companies operate on lands managed by the agencies covered by this legislation. Our members and affiliate members provide recreation services to more than 2,000,000 Americans each year.

Mr. Chairman, please accept my sincere appreciation on behalf of outfitters and guides for your interest in this issue and for your careful consideration of all the testimony presented to you on this important legislative initiative.

We also understand that the sponsors of H.R. 3283 are sincere in their desire to address a significant funding problem that is likely to worsen as entitlements seize a larger and larger portion of federal budgets. As is often the case, legislation is proposed to stimulate debate and input in an effort to make improvements to the legislation. It is my hope that this testimony will make a positive contribution to this debate.

Outfitters and their customers have paid fees for access to federally-managed lands for decades. We understand the importance of recreation fees and their role in helping federal agencies accomplish their missions. We also believe that many worthwhile projects have been completed under the recreation fee demonstration program. That being said, while H.R. 3283 has several commendable provisions and good intentions, we do not support the legislation in its current form. I will offer several suggestions on changes to the bill that we hope will enable us to support the legislation.

Need for a comprehensive approach to funding federal land managing agencies.

We believe fee legislation should be coupled with a broader initiative to secure adequate funding for management of public lands through a variety of revenue sources. That legislation should also authorize an independent review of agencies' organizational structures, backlog, and operating overhead to ensure that funding is not consumed by

unnecessary overhead and outdated processes. Then, legislation should specify adequate funding for management of public lands based on realistic projections of need through a variety of revenue sources to include:

- Secure, stable funding from offshore oil and gas royalties
- Congressional appropriations
- Recreation fees
- Corporate and charitable contributions
- Other unique strategies.

Others have proposed this approach, including Carl Wilgus, representing the Western States Tourism Council, at an oversight hearing on recreation fees held in the Senate last April.¹ Such an approach is difficult, but without it the future of funding for public lands is at risk. At one point, Congress wrestled with the difficult process of closing unneeded military bases despite their impact on certain Congressional districts. While this issue is somewhat different, the base closing initiative is indicative of Congress' ability to successfully tackle tough issues.

We believe Congress and the Administration need to take a hard look at agency cost structures. The Forest Service has 121 Administrative units each headed by a Forest Supervisor in addition to Regional offices and Deputy Chiefs. One former Senior Executive in the Forest Service candidly admitted to me that the agency needed restructuring to reduce overhead costs. He cited a \$200,000 appropriation for the Continental Divide Trail of which only \$60,000 actually reached the ground. On the other hand, field offices in the agency appear to be overwhelmed with process oriented work.

There are indications that the National Park Service may have similar issues. Secretary Norton recently commented that the National Park Service, in spite of some recent public pronouncements, has more dollars per acre, per unit, per employee than ever before.

¹ Testimony of Carl Wilgus, Idaho Department of Commerce, Oversight Hearing on the Recreation Fee Demonstration Program, Subcommittee on Public Lands and Forests, Senate Energy and Natural Resource Committee, United States Senate, Wednesday, April 21, 2004.

To their credit the Forest Service has made some progress in the reduction of duplicative processes. The Forest Service's own white paper, "The Process Predicament" (June 2002),² estimates that 40% of direct work at the forest level is consumed by planning and assessments that cost the agency \$250 million annually. The same document estimates that \$100 million could be saved through revisions to their processes and they have begun to take actions to reduce these costs through revised planning regulations.

In most cases, BLM appears to be the leanest of all the agencies that we deal with and the least conflicted by duplicative, arresting processes. Still, there is significant functional overlap between BLM and the Forest Service where their boundaries abut. Some of our members are facing a difficult time with longstanding permits for trips that cross agency boundaries because each agency is completing separate management plans for adjoining resources. Consolidation of these functions, offices and activities may make sense. There are examples of where the agencies have successfully consolidated some functions, but a more careful review of these opportunities is in order.

Unfortunately, H.R. 3283 does nothing to improve agency operating efficiencies. H.R. 3283 has a set of principles, many of which are well-meaning, but that are general, vague and unenforceable. One provision is commendable in its intent. Section 2, subparagraph 2 calls for "Fair and Equitable Fees" and states that fees "should be affordable and not significantly impact visitation levels." We very much support this provision, but believe that it is unrealistic to increase consumers' costs to visit public lands and to then expect visitation levels to remain the same.

Need for Clear Policy Direction in H.R. 3283.

Legislation authorizing recreation fees should have a clear policy statement. Is the fee authorization designed to restore backlogged maintenance or are they to pay for salaries for recreation managers and others? What happens to the fees when backlogged maintenance is complete? Where does the money go? Is it used to add staff or offset appropriated revenues?

² "Process Predicament", USDA Forest Service, June 2002, page 5.

Fees should only be levied for basic, necessary projects and improvements. Otherwise, fee users may become the new source of funding for well intentioned, but unnecessary spending. The recreation economy in rural areas simply cannot support unnecessary spending. We believe fees will be supported for backlogged maintenance, necessary services, and modest construction of necessary facilities, if the users have a voice in levying, collecting, spending and discontinuing the fees as may be appropriate. Many users are eager to help the agencies if the money is spent wisely.

Dangerous notions about fees.

A dangerously naive notion prevails that since everyone pays the fee, it can be easily passed on to the consumer with little impact on demand.

Most outfitters and guides are currently wrestling with increased fuel and insurance costs, not to mention health care cost increases if they are lucky enough to have coverage. All these increases cannot be absorbed by the consumer who places a value on an experience in comparison to the other options that they have for discretionary spending on leisure, home improvements or retirement. Once the price of a trip exceeds a perceived value, for all but the very rich, demand declines.

Outfitters also operate in a competitive environment. While this environment is generally beneficial to the consumer, it also results in price competition that can lower pricing power and effect margins. These are among the factors that often preclude outfitters from passing on all fee increases. It is also why some fees threaten to dramatically reduce an operator's bottom line.

Another notion often heard is that users should pay the cost of federal recreation management on public lands. Users have little control over these management costs, which are the result of years of legislative direction from Congress and highly evolved bureaucratic management structures and processes reinforced by court rulings. While we can help, to expect users to suddenly bear these costs, or a substantial portion of them, is

unrealistic. In some cases, agency administrative overhead already consumes 60% to 70% of appropriations. We would like to work with Congress to address both the revenue and cost side of the equation. I have made suggestions in this testimony on how to proceed on this dual track. Until the cost side is addressed, we reserve the right to oppose this and other recreation fee initiatives, including temporary reauthorization of fee demo. I realize there is some risk to making such a strong statement, but I am compelled to do so because the survival of the hard working families that I represent is put at risk by the unfettered fee authority currently available to agencies under fee demo.

Fees should not be implemented everywhere just because agencies have the authority.

- Many outfitters and guides are providing services to the public that are fundamental to the agencies' missions at a resource. Some of these outfitter operations are in very challenging business environments that have survived for years on their resourcefulness, wit and intuition. Margins are very thin for many of these operators. Another wave of fees would eliminate the recreation opportunities these operators provide to the public.

Recreation fees should not be implemented in these areas just because the agency has the authority to do so. We have already seen the quest for fees destroy previously successful outfitter operations because an agency was unrelenting in its demand when business went soft in the wake of 9/11. We thank the Secretary of Interior for urging restraint among her agencies during this difficult period and appreciate the extent to which most agencies cooperated.

Some outfitters are already paying higher fees in Park units as a result of agency cost recovery or concessions fee initiatives. Another layer of fees would seriously compromise some of these operations, especially where weather, fire or economic downturns have disrupted demand. The Buffalo National River is a good example. Canoe liveries there are struggling with increased concessions fees and adverse weather conditions that have persisted for several years. Many are losing money after NPS raised

minimum concession fees to 4% for the first \$100,000 and 7% for revenues over \$100,000. The state and county also collects 9% for sales and tourism taxes.

Improved public participation and oversight in fee initiatives is needed.

Two significant omissions in H.R. 3283 include:

- the lack of effective oversight of the fee implementation and expenditures, and
- inadequate public participation in setting and administering fees.

While collaboration is encouraged, there is no legally binding requirement for agencies to involve the public in a significant way. Unless this requirement is strengthened, the same inconsistent application and administration that has hampered support for the recreation fee demonstration program will likely continue. With over 200 groups, by some counts, organized to oppose the implementation of recreation fees, it is apparent that business as usual will not work.

The only accountability provision in the legislation is a provision in the purposes and guidelines that the agencies “should collect data and publish annually public documentation showing how the recreation fee program is administered.” This level of disclosure is inadequate.

We are concerned that without better oversight both at the local and national level, fees may be misdirected and used for purposes other than to benefit recreation. There have been runs on fee demo money that attempted to divert the money away from their original intent – reducing back-logged recreation maintenance. The Forest Service did not follow through on those initiatives, but it underscores the need for oversight, as well as, clearer policy direction.

The General Accounting Office Report of September 2003 found a lack of documentation of progress in reducing the Forest Service’s maintenance backlog. Reducing this backlog was one of the primary justifications for fee demo. There is no question that much fee

revenue has been used for this purpose, but the lack of documentation limits the extent to which progress can be measured.

Other examples of the need for better oversight come from the field. On the Salmon Challis National Forest, the Resource Advisory Committee was given a report of proposed projects for use of fee demo money in 2003, but the agency could not provide an accurate accounting of the expenditures for 2002 and did little to document progress on the projects initiated. Then, after promising last year to implement annual meetings of user group representatives to prioritize projects, the agency did not follow through with the meeting.

Recommendation on oversight and public participation – Recreation Fee Councils.

We recommend that the legislation authorize the Secretary for each agency to appoint members to state level Recreation Fee Councils (members may be appointed by each Secretary in proportion to the acreage for each agency in the State) to oversee recreation fees where fee collections or expenditures for all agencies exceed \$200,000 annually. One agency Secretary could oversee the fee council with nominees offered by the other Secretaries. These fee councils would have the authority to oversee recreation fees in each state for all federal agencies and have binding authority to set fee levels, approve projects and oversee expenditures.

State level oversight is preferable to a national level council because it is closer to the action. The division of labor afforded by state fee councils is also appropriately scaled to the magnitude of the oversight task and ensures a higher level of public participation.

Resource Advisory Councils (RAC) are not adequate for public participation and involvement. They are advisory in nature and the agency has the authority to set the agenda for a RAC.

State level fee councils, if representative of users' interests, will help develop stakeholder support for appropriate fees and avoid the overlap and duplication of fees that we see in

some areas in the field. They will ensure that fees are meshed appropriately with state fee initiatives and that fee sharing arrangements are facilitated. In some states, such as Montana, the state is attempting to regulate rivers on federal lands in a manner that overlaps federal regulation. In other areas, outfitters are subject to two or three agency fees without any corresponding improvement in the experience. Fee councils should help avoid those problems.

We strongly recommend that legislation specify the make-up of state level fee councils subject to appointment by the Secretary. They should be comprised of

- at least six (6) representatives from groups who are actually paying the fees, specifying no less than two representatives from the outfitting and guiding industry or a number that is in direct proportion to percentage of fees paid by each group;
- representatives from the federal agencies not to exceed four (4) representatives;
- and
- two (2) representatives nominated by the governor in each state, one from travel and tourism, and one attorney familiar with the various state and federal legal authorities.

Notice of fee implementation.

The notice and documentation provisions in S. 1107 for the implementation of recreation fees are also important to consider for inclusion as a provision in H.R. 3283. Currently, outfitters are finding that agencies sometimes announce fee increases at the onset of a season after prices have been published. On the Deschutes River in Oregon in March 2003, the BLM quadrupled fees on weekends effective that season with no significant input from outfitters. The justification for this increase was based solely on the agencies' management cost, which involves overlapping management by the State of Oregon. The increase was imposed at a time when outfitters were struggling through a recession and skyrocketing insurance rates. It underscores the frustration that we have with the unfettered authority in the current fee program which is perpetuated in H.R. 3283. The autocratic implementation of the fee demonstration program in some areas is a reason we support state fee councils.

National Recreation Council

A national fee council (National Recreation Council) should be authorized

- to provide oversight and national coordination for federal passes and for the overall recreation fee program (except for permit and NPS concessions contract fees);
- to review the State Recreation Fee Council's performance;
- to coordinate regional activities as may be appropriate;
- to develop documentation systems;
- to recommend best practices;
- to coordinate regional initiatives;
- to oversee spending of fees that are returned to the agency at the national level;
- and
- to resolve disputes.

Specific uses of fee revenue.

The first priority for recreation fee proceeds should be to benefit projects for users paying fees in the areas where the fees are being collected. Fees should not be used to offset appropriated revenues. Fee councils should have the authority to discontinue fees when they are not needed or are not beneficial. These issues should be addressed in the legislation.

We strongly recommend that at least 15% of the fee revenue be returned to the agency for use at the national level to promote sustainable use and enjoyment of federally-managed lands.

Fee retention for permit fees.

We strongly support fee retention of outfitter and guide permit fees at the resource where they are collected if the provision that prohibits the total fee burden from crippling the opportunity for a profit is included in the legislation.

If reauthorized, we recommend a six year authorization for recreation fees.

The requirement for periodic reauthorization of the recreation fee demonstration program has helped make the agencies more sensitive to users and more customer service oriented. We support a six year authorization if the oversight and policy issues outlined in this testimony are addressed accordingly. Periodic reauthorization allows for corrections and adjustments to the program based on the experiences of the preceding period.

Issues in H.R. 3283 that are specific to outfitters and guides.

1. **The repeal of existing permitting policies concerns us.** HR. 3283 has the potential for significant impact on outfitters and guides because it repeals section 4. of the Land and Water Conservation Fund, thereby repealing the current Forest Service and BLM permitting authority. Guest ranches and other small businesses operating on public lands may find themselves subject to a new, as yet undetermined, policy for permit issuance. There are also some potential conflicts with the National Park Omnibus Management Act. **Solution: We believe that the bill should make reference to existing agency permitting policies or follow the language authored by Sen. Craig in S. 1420, The Outfitter Policy Act. It should also defer to the National Park Omnibus Management Act of 1998 on outfitter concessions contract fees.**

2. **A provision should preclude overlays of fees from threatening the viability of outfitter and guide operations.** After several Congressional hearings where the overlap and duplication of fees have been brought to the attention of Congress, we still have areas where trips span agency boundaries where each agency is levying recreation fees. H.R. 3283 does not require fee consolidation in those cases.

At least two fees are authorized by H.R. 3283, which will apply to outfitters and which the agency has unilateral authority to set according to their own needs. Separately, the Forest Service and Bureau of Land Management (BLM) are proceeding with cost recovery initiatives for permit administration. In some areas, the Forest Service is trying to collect road fees in addition to permit fees. The National Park Service has a set of fees and cost recovery requirements for various authorities under the National Park Omnibus Management Act of 1998, some of which conflict with the provisions in H.R. 3283. **Solution: We strongly urge that any legislation include a provision that “prohibits the cumulative fee burden from permit fees, basic recreation fees, cost recovery and other fees levied on outfitter and guide operations from precluding a reasonable opportunity for a profit or successful business venture”. These fees should also be consolidated into one predictable fee. Outfitter permit fees should not be subject to approval by the state fee councils, but standardized in each agency and subject to comment in the Federal Register.**

3. **Recreation fees should not float from year to year throughout the term of a National Park Service contract.** Outfitters, who are required to meet obligations under NPS contracts, should not be subject to recreation fees that float throughout the term of the contract. When a proposal is accepted by NPS, an outfitter is required to meet their obligations and endure the associated overhead throughout the term of the contract. They cannot be expected to do so if the majority of revenue collected by NPS comes from a separate recreation fee (fee demo) that floats through the term of the contract. **Solution: Allow for a review of the franchise fee and the recreation fee after a five year period, or immediately in the event of extraordinary circumstances.**

4. **The exemption for schools and academic institutions needs to be narrowed.** “Outings conducted for noncommercial educational purposes by schools or bonafide academic institutions” are exempted from basic recreation fees

although some institutions run trips that are very similar to commercial trips. It is not clear to us why universities can collect fees for their educational services, but agencies are precluded from collecting a modest recreation fee for significant recreation activities. In some cases paying customers are included on trips that are accredited for course credit. Customers of commercial services provided by colleges and universities and customers of recreation activities should not be exempted from the basic recreation fee.