

Testimony on the Federal Lands Recreation Enhancement Act  
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Madam Chairwoman and members of the Committee thank you for taking the time to consider the concerns and issues that are necessary to improve the Federal Lands Recreation Enhancement Act (FLREA). Since FLREA is the authority under which outfitter and guide permits are currently issued and those fees retained by the managing agency, America Outdoors Association members and our affiliate state organizations are supportive of reauthorization provided there are adjustments. In addition to permit fees authorized under FLREA, many outfitters are also paying amenity fees. My testimony will cover issues and needed adjustments for both types of fees.

America Outdoors Association is a national, non-profit trade association representing the interests of outfitters and guiding companies, many of which operate on federally-managed lands and waters under permits authorized by the FLREA.

One of the greatest accomplishments of a revised and reauthorized Federal Land Recreation Enhancement Act would be to streamline outfitter and guide permitting processes. Federal lands are on virtual lockdown to new recreation activities offered by outfitters and organized groups because the cost and complexity of issuing permits for new activities or even making simple adjustments to existing permits to adapt to changing markets has become prohibitively expensive. Attached is a chart (Exhibit 1), which reveals all the processes and analyses necessary to issue permits for new activities in National Forests. This is a picture of a dysfunctional process. Permit language has also become increasingly hostile to small businesses and nonprofits due to the imposition of Department of Labor clauses in permits which have the potential to wipe out many multi-day trips.

**FLREA is the authority under which more than 8,000 recreation special use permits are issued in National Forests and on BLM lands.** These permits are issued for special events, competitions and outfitting and guiding. FLREA expires in September 30, 2016 along with the authority for issuing these permits and the agencies' retention of associated fees. If FLREA expires or is repealed, fees will remain in place, but they will go back to the Treasury and that will result in the elimination of recreation access for many recreation users. Agency personnel have suggested recreation capacity will be diminished without permit and amenity fee retention. Already, agencies are trying to figure out what to do with annual passes which are issued for terms that now expire after FLREA's expiration. The future of recreation access is dependent upon passage of FLREA. FLREA also offers the opportunity to accomplish needed reforms.

While we support reauthorization of FLREA, changes are essential to ensure enduring support for the recreation programs supported by recreation fees.

We offer the following suggestions and perspectives on FLREA and recreation fees in general.

- 1. Include a provision in FLREA which makes it clear that Forest Service and BLM permits are not subject to the Service Contract Act (SCA).** The U.S. Department of Labor uses the SCA to justify imposition of provisions prescribed by Executive Orders which are not appropriate for multi-day, backcountry outfitting operations. FLREA should make it clear that the SCA and the potential requirement for "prevailing wages" are not appropriate for the outfitting and guiding industry.
- 2. A provision should be added to the authority for recreation special use permit fees for outfitters and group activities to restrict permit fees to activities which take place on federally-managed lands.** The current Forest Service fee policy allows the agency to base fees on the entire cost of a trip even when a small portion of the trip accesses or occupies National Forests. The Forest Service has basically established a tax on activities on private lands, which the U.S. District Court in Alaska ruled to be illegal. Still, the agency persist with this fee policy in some Forests in the lower 48 states. For example, a youth camp or

guest ranch may conduct most of its activities on their own property with food, lodging and other activities taking place on private land. If the group spends one day out of a ten day stay hiking on a National Forest, some Forests base the permit fee on the overall price for the entire stay instead of on the one-day of hiking. Then the agency applies an off-Forest discount that is not proportional to the time spent outside the Forests. This aspect of the Forest Service fee policy was challenged successfully in Federal Court in *Tongass Conservancy v Glickman* (October 6, 1998) and the Alaska region was forced to revise their fee policy as a result. However, the Forest Service still persist with this illegal fee policy in some Forest.

3. **Authorize flat fees for day uses.** Agencies should have the authority to charge flat fees for day use, which would resolve the problem of how to calculate fees for trips that are conducted partially on private lands or which cross agency boundaries. The Forest Service eliminated flat fees in 2008 except for minimal fees for temporary permits which are issued for no more than 200 service days.
4. **The provisions in the current FLREA law which prohibit additional charges to permit holders for road use (SEC. 803(d)(2)) and for monitoring endangered species (SEC. 808(b)) should be retained.** FLREA should also prohibit layering fees onto permit holders, who are easy targets for agency fee initiatives. Permit holders should not be charged road use fees unless other users are also charged. Requiring permit holders to pay road use fees to cover the costs for road maintenance for all recreation users is unfair and unsustainable since outfitters are the minority users of those roads.
5. **Streamline permit documentation.** Language should be included in FLREA reauthorization to encourage efficiency in permit administration and NEPA documentation. The use of categorical exclusions should be expanded.
  - a. Authorizing categorical exclusions provided there is no significant change in the permitted activity will help remove some of the uncertainty about the use of categorical exclusions. FSH 1909.15 enables the use of categorical exclusions for permits but suggests limiting their use when extraordinary circumstances are present which include: “Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas; (4) Inventoried roadless areas or potential wilderness areas.”
  - b. Elimination of a “needs assessment” prior to authorizing permits for new activities outside of designated wilderness would eliminate another bureaucratic hurdle and may enable more permits for new uses.
  - c. Authorize the use of programmatic environmental analyses or environmental assessments in lieu of NEPA documentation for every permit issued.
  - d. Authorize temporary permits for new uses, which are eligible for categorical exclusions under CEQ guidance. The BLM does not have a temporary permit and the Forest Service restricts their temporary permit to 200 service days. Expanded authority for temporary permits would allow the agencies to authorize new commercial and group uses provided they are not inconsistent with Forest or Resource Management plans.
  - e. Revise the Forest Service and BLM cost recovery rule, which goes to full cost recovery after 50 hours, with no credit given for 50 hours. Documentation costs for a group of outfitter permits can easily exceed \$100,000, which cannot be sustained by a small group of outfitters.
6. **Provide the BLM and the Forest Service with the authority and encouragement to concession-out facilities which are not sustainable in today’s budget environment.** Unless these agencies move to concession-out some facilities which are not self-sustaining, recreation fees are likely to be collected from visitors who do not use these facilities and transferred to support and maintain properties which are budget black holes. Whether it is done in FLREA or a separate bill, this is an important strategy to hold down fees and the costs of operating and maintaining facilities where the function is marginal to the agencies’ core mission.
7. **Require an annual report to be published on amenity fee collections and expenditures at each fee site.** Agencies should be more transparent about the use of fee revenues. Within 90 days of the close of the fiscal year, each collection site should provide an annual accounting of fees collected and how amenity fees were spent. Failure to provide the report should result in loss of fee authority for that resource. Routine audits of a certain number of fee sites with reports going to the Committee should be conducted. We do

not believe that 80% of the fees are always being returned to the site where they are collected based on our conversations with field staff.

8. **Once FLREA is reauthorized, please plan to conduct regular oversight hearings.** Regular oversight hearings are essential to ensure that the intent of FLREA is realized.
9. **We concur with others that fee RAC's have not been effective.** Recreation users who pay fees should have the opportunity to provide recommendations on how fee money is spent. Public meetings and annual accountability should be mandated in lieu of a formal fee RAC.
10. **Once projects are completed at fee sites or there are no services provided, amenity fees should be removed or diminished.** Some attention needs to be given to situations where more fee revenue is collected at popular sites than can be cost effectively or appropriately used. Instead of transferring those fees to other locations to benefit users who are not paying recreation fees, they should be eliminated or reduced.
11. **Establish a fee set aside for river and trail maintenance.**

Since the Forest Service is only able to maintain approximately 30% of its trails on an annual basis, an alternative strategy is required. We suggest revising the authority in SEC. 807 of the current law, which was never implemented. A fund could be established from the 20% fee set aside for agency-wide use to provide micro contracts to outfitters and other groups which have demonstrated capability to clear trails and river corridors.

Thank you for the opportunity to testify on this important legislation. I look forward to answering any questions you might have.