

Testimony
Before the Committee on Energy and Natural Resources
United States Senate

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Madame Chairman and Distinguished Members of the Committee:

I am Kitty Benzar, President of the Western Slope No-Fee Coalition, an organization that has been working since 2001 to restore the tradition of public lands that belong to the American people and are places where everyone has access and is welcome. I am speaking to you today on behalf of our supporters, on behalf of the organizations with whom we closely work, and on behalf of millions of our fellow citizens—traditional users who hike, ride, boat, hunt, and fish on federal lands and waters—who are fed up with fees for general access to our National Forests and BLM lands and with ever-increasing entrance fees for our National Parks. These fees are acting as a barrier to healthy outdoor recreation. It's time for Congress to exercise strong oversight to curb widespread agency over-reach.

In multiple appearances before committees in both the Senate and House, I have provided numerous examples of how the Forest Service and BLM are evading the restrictions on fees that are in the current statute. They have amply demonstrated their ability to use any small ambiguity or conflicting language to go far beyond congressional intent as expressed in the law and by the law's authors. Any reform or revision of FLREA must be crystal clear as to what fees are allowed and, even more importantly, what fees are not.

The fee bill introduced in the House last year by Representative Bishop fell far short of that goal. It would have deleted the prohibitions on excessive fees that are in FLREA and it was so riddled with vague and undefined language that it would have allowed the land management agencies to charge anyone to do anything anywhere. I believe that recreation fee legislation that protects the public's ability to access their lands while still providing supplemental revenue to the agencies to manage recreation is possible and urgently needed. I have provided your staff with a discussion draft of what that legislation might include, and I look forward to working with this committee to craft common-sense recreation fee legislation that will serve current and future generations of public lands users well.

Nineteen years ago the Fee Demo program introduced the "pay to play" approach to recreation by authorizing the Forest Service and BLM to charge the public simply to park their car and go hiking, riding, or boating in undeveloped areas without using any amenities. Fee Demo also allowed the Park Service to increase and retain entrance fees and to charge extra for backcountry access. "Pay to play" has transformed our National Forests and BLM lands from places where everyone has a basic right to access into places where we can be prosecuted for not having a ticket of admission. Our National Parks, where modest entrance fees have long been well accepted, are now priced at a level that makes it difficult for many families to visit them, and further increases are being proposed.

For these past nineteen years the federal land management agencies have viewed American citizens as customers rather than owners, and have increasingly managed basic access to outdoor recreation as an activity that must generate revenue, rather than as an essential service that promotes a healthy active population.

Congress gave the agencies Fee Demonstration authority in 1996 to test, as an experiment, unlimited fees and see what worked and what didn't, what the public would accept and what they would not. With this encouragement, the agencies embarked upon a new paradigm in public lands management. For the first time, the Forest Service and BLM began requiring direct payment for admission to the National Forests and other public lands under their management. Simple things like a walk in the woods or paddling on a lake at sunset became a product that could be marketed and sold to paying customers.

Opposition to Fee Demo was overwhelming and widespread. From New Hampshire to California, from Idaho to Arizona, Americans from all walks of life and all political persuasions raised their voices against a fee-based system for basic access to outdoor recreation. Resolutions of opposition were sent to Congress by the state legislatures of Idaho, Montana, Colorado, Oregon, California, and New Hampshire. Counties, cities, and organizations across the nation passed resolutions opposing the program. Civil disobedience was widespread, and in response enforcement became heavy-handed. Criminal prosecutions of people who simply took a walk in the woods without buying a pass were disturbingly frequent.

Congress terminated the experiment in 2004 by enacting FLREA to set limits and scale back on fees based on what Fee Demo had shown. FLREA's limiting language, had it been honored by the agencies, could have achieved this and might have calmed much of the public's opposition. For example, at subsection (d), FLREA prohibits fees:

“For persons who are driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using the facilities and services.”

While the agencies made the appropriate changes in a few areas once FLREA was passed, in most places they carried on as if nothing had changed and recreation fees continued to spread to thousands of undeveloped and minimally developed areas. Americans are still being charged fees for such basic activities as: roadside parking, walking or riding on trails, access to vast tracts of undeveloped public land, and even for such fundamentals as the use of toilets. Even FLREA's straightforward requirement that a “permanent toilet” be provided before a Standard Amenity Fee can be charged has been interpreted to allow roadside porta-potties because then, according to the Forest Service, they can charge a fee for access to all the undeveloped backcountry beyond the road. Any reform of FLREA must clearly spell out that use of basic facilities like toilets, picnic tables, and drinking water, as well as access to undeveloped areas, is to be fee-free.

National Parks have always been distinctly different from other public lands, with higher levels of infrastructure and services. Entrance fees for them, when kept at modest levels, are generally well accepted. The upcoming NPS Centennial makes it imperative that Congress deal with park fees soon. Because the parks are so different they have never been a good fit within the FLREA framework, so we suggest that fee authority for the NPS be removed from FLREA and placed in park-specific legislation such as a Centennial bill.

Recreation access fees are a new tax and they are a double tax. Americans already pay for management of their federal public lands through their income tax, but these fees are an additional tax, levied directly by the agencies and distributed without congressional oversight.

For those who enjoy motorized recreation, or who hunt or fish, they are a triple tax, because after paying state license fees as well as federal income taxes, they often must also pay an access tax to enjoy recreation on their public lands.

It is also a regressive tax. It puts the burden of public land management on the backs of Americans who live adjacent to or surrounded by federal land. In rural counties in the West, where in many cases over 80% of the land is federally managed, public lands are an integral part of life. Citizens in these areas, who are often just scraping by financially, should not have to buy a pass just to get out of town.

This regressive tax falls most heavily on lower income and working Americans. Two separate studies conducted ten years apart and on opposite sides of the country reached the almost identical conclusion that fees have caused nearly half of low-income respondents, and a third of all respondents, to use their public lands less. This has been reflected in declining visitation across agencies and geographic areas. For example, the Forest Service's visitor use estimates have fallen from 214 million visits annually in 2001 to only 161 million in 2012 (the most current year available). The land management agencies tout their efforts to encourage underserved and diverse populations to visit public lands, yet those are exactly the people who are most easily deterred by fees.

Fee Demo and FLREA have been a financial failure as well. GAO reports have revealed hidden administrative costs, fees being collected far in excess of operating costs, and agencies being unable to provide accurate and complete accountability for their fee revenue. One example is the Red Rocks Ranger District on the Coconino National Forest, where nearly half of fees paid through automated fee collection devices is retained as a sales commission by the device vendor. Yet just down the road on the Tonto National Forest they are in the process of installing those same automated devices, which will presumably claim similarly high commissions. Both Forests assure the public that 100% of their fees directly benefit the place where they were paid, but that is clearly not possible when collection costs are so high. The backlog of deferred maintenance, which was the initial justification given for Fee Demo, has continued to grow instead of shrinking, and appropriated funding disappears into agency overhead instead of making it to the ground. Instead of increased recreational opportunities, sites have been closed and facilities removed if they are perceived by the managing agency as inadequate generators of revenue.

The powerful incentive embodied in fee retention has proved to be too much for the agencies to resist. They have used an undefined word here and an ambiguous sentence there to justify the implementation of policies that nullify the protections on public access that FLREA was supposed to provide. Contorted interpretations of FLREA's Standard Amenity Fee and Special Recreation Permit Fee authority have led to de facto entrance fees to hundreds of thousands of acres of undeveloped federal recreational lands.

One way to curb these abuses and restore common sense to fee policy would be to end the authority for fee retention and return fees to the Treasury for appropriation and oversight by Congress. As long as they get to keep all the money they can raise, the agencies will inevitably seek to find and exploit every weakness they can in the wording of any limiting law.

If Congress decides that fee retention is to continue, then it is imperative that the restrictions and prohibitions on where, and for what, fees can be charged must be spelled out very clearly, and there must be a procedure for citizens to challenge fees that do not appear to comply with the law. Strong congressional monitoring and regular audits must be included.

A particular concern to many people is the de facto privatization of public lands through the widespread use of private concessionaires and contractors to operate recreational facilities and programs, often outside of the bounds of FLREA. At subsection (e), FLREA says:

“Fees Charged by Third Parties- Notwithstanding any other provision of this Act, a third party may charge a fee for providing a good or service to a visitor of a unit or area of the Federal land management agencies in accordance with any other applicable law or regulation.”

This has been interpreted to mean that the prohibitions in FLREA on fees for certain types of activity are null and void when a permittee or contractor is operating the facility or providing the service instead of the agency itself. In practice, this means that concessionaires, which operate more than 80% of highly developed USFS campgrounds and an increasing number of day-use sites, charge fees for things, like parking and access to backcountry, that FLREA prohibits. It also means that concessionaires are not required to accept federal Interagency Passes on the same terms as agency-operated sites, creating public confusion and reducing the value of the federally-issued passes. An agency manager can decide to transfer management to a private entity without any public process, and new fees and fee increases at privately managed sites are not subject to public notice or comment. This amounts to the privatization of public lands, excludes citizens from having a role in important management decisions, and means the Forest Service is forgoing campground revenue that would otherwise flow into its own coffers by letting concessionaires collect it instead.

Another example of privatization is requiring the public to use the reservation services contractor “recreation.gov” in order to gain access to public land. The contractor charges a service fee on all transactions, on top of the agency fee charged under FLREA. In many places where a permit is required, for example Desolation Canyon in Utah, it can only be obtained through recreation.gov so there is no access without paying their service fee. The ability to make an advance reservation is a convenience and a service fee for that may be appropriate, but those who don’t need or want a reservation should not be required to pay for one.

An extreme example is the Mendenhall Campground on the Tongass National Forest, where cash is no longer accepted as payment from campers. Instead, all payments must be by credit card to recreation.gov, which adds a service charge of \$9 or \$10 depending on whether the transaction is online or by phone. Even if a camper arrives to find a site that’s empty and available, they must “reserve” it and pay the contractor’s fee in addition to the camping fee. This doubles the cost of a basic family site and triples it for holders of senior/disabled passes.

Any reform or revision of FLREA must create a consistent fee program, regardless of whether it is a private entity or a federal agency that is providing services. Strong protections for general public access should be spelled out and should apply even when the agencies have chosen to use a concessionaire or contractor. Otherwise, any legal restrictions the agencies don’t like can be rendered moot simply by outsourcing to private contractors.

Fees for use of developed facilities such as campgrounds are reasonable and have been well accepted, and we support them. Fees are not reasonable when they are charged for access to undeveloped or minimally developed places. Legislation should ensure that the agencies do not have an incentive to add facilities just because they want to be able to charge and retain fees. Ample experience under FLREA shows that if fees are based on the presence of amenities, the agencies will charge a fee anyplace that there is any sort of facility and will build new facilities merely to justify a fee. This adds to maintenance backlogs and deters public use.

The concept of shared ownership, shared access, and shared responsibility is based on a long accepted tradition that on federal lands facilities will be basic. Federal facilities should remain basic so that we can afford to make them available to everyone and can keep maintenance costs to a minimum.

Fee authority as currently being implemented has taken ownership of these lands out of the hands of the public and given it to the land management agencies, which too often out-source it to private companies. This is a change in relationship that is most disturbing. It is time for the public, acting through our elected federal officials, to re-assert ownership of our public lands from these agencies that have forgotten that *it's not their land!*

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;
- no incentive is given to the agencies that would encourage them to install facilities for the purpose of creating additional fee sites and revenues;
- ironclad agency financial accountability is established and collection costs are not allowed to exceed 15% of revenue;
- ongoing congressional monitoring and oversight, including regular audits, is required.

FLREA was Congress's attempt to replace Fee Demo with legislation that would provide the agencies with appropriate, albeit limited, fee authority. Eleven years after the passage of FLREA we can now see what its weaknesses are and where opportunities for improvement lie. I have submitted to committee staff suggested discussion language for your consideration. It represents our best attempt to ensure that the agencies are granted reasonable and well-defined fee authority, while protecting the public lands from costly unneeded development and preventing the recreating public from being confronted with an onslaught of new and ever-higher fees. I believe that this draft, based on a more than decade's worth of input from a wide cross-section of recreational visitors to federal lands, would more nearly meet the requirements listed above than FLREA currently does. It would close the loopholes in FLREA that the agencies have been able to exploit, and create an equitable recreation fee program that would enjoy wide public support. I urge you to consider it.

Madame Chairman and members of the Subcommittee, thank you for your consideration and for allowing me to testify before you today.

Respectfully submitted September 17, 2015

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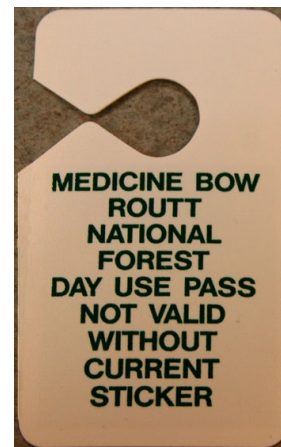
www.WesternSlopeNoFee.org

This is one of several fee trailheads in Utah leading into Cedar Mesa, a primitive, undeveloped area. Overnight use here is limited but day hiking is not. BLM gets around FLREA’s prohibition on entrance fees and fees for undeveloped areas by defining all foot travel into the area as a “specialized recreation use” and requiring a permit, self-issued in unlimited numbers in the case of day hikers, to proceed beyond the fee station.



This roadside pullout on the Angeles National Forest lacks any permanent infrastructure but has required a fee for parking since 1996. The porta-potties were added after FLREA was enacted, to supposedly meet the requirement for a “permanent toilet” as one of the standard amenities at a fee site. Several of the other required amenities are still absent. This is an example of adding facilities and costs solely for the sake of charging a fee.

This \$30/year pass (or an Interagency Pass) is required for access to undeveloped backcountry at eight trailheads on the Laramie, Douglas, and Parks Ranger Districts and at 20 day use and picnic areas forestwide. None of these fee sites has ever been subjected to public notice or comment.





An unneeded picnic table gathers weeds at a trailhead on the Coconino National Forest in Arizona. It was installed in order to justify a fee, even though almost nobody wants to picnic there. Two more trailheads on this Forest are currently undergoing major construction in order to transform them into so-called “picnic areas” and begin charging a parking fee to all users.

This sealed and disabled fee payment tube is at a campground on the Tongass National Forest. The Juneau Ranger District no longer accepts cash from campers. Instead, they must pay for their site by credit card to a private contractor, plus either a \$9 or \$10 service fee depending on whether they pay online or by phone.



A Northwest Forest Pass (or an Interagency Pass) is required for parking at over 400 sites in Washington and Oregon, of which more than 300 are trailheads.

At Mendenhall Glacier on the Tongass National Forest, a fee is currently charged only to see the exhibits in the Visitor Center. Starting in 2016 the fee area will be expanded to include the restrooms and viewing platforms. No public comment has been sought regarding this change.



This crumbling stairway and dangerously damaged hand rail lead to an overlook at Mirror Lake on the Wasatch-Cache National Forest in Utah. Despite FLREA's prohibition on fees for scenic overlooks, this has been a fee site since 1996. Those fees have been retained by the Forest, yet serious deferred maintenance needs remain unaddressed.