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Testimony
Before the Subcommittee on National Parks, Forests, and Public Lands
Committee on Natural Resources
United States House of Representatives

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Paying to Play: Implementation Of Fee Authority On Federal Lands
June 18, 2008

Mr. Chairman and Distinguished Members of the Subcommittee;

Thank you for the privilege of testifying before you today concerning implementation of the Federal Lands Recreation Enhancement Act by the USDA-Forest Service and the Bureau of Land Management.

I am Kitty Benzar, President of the Western Slope No-Fee Coalition, an organization that works 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 who believe as we do that FLREA is not working and, quite frankly, can not be made to work no matter how much it is tinkered with.

The Federal Lands Recreation Enhancement Act, like the Fee Demo law that preceded it, was enacted as a rider on an omnibus appropriations bill. Despite being a profound change in public policy, it never received a vote on the floor of the House and was never introduced in the Senate. The fees being charged under its authority constitute a double tax on the American people, levied directly by the land management agencies. They are a regressive tax that, according to published academic reports, is both exclusionary and discriminatory.

These fees have harmed communities located near or surrounded by federal lands, unfairly limited public access, and subjected citizens to severe criminal penalties. They have made it more difficult for Americans to experience the joys and benefits of outdoor recreation and access to nature.

Many of these fees go far beyond the scope of the law and, I believe, far beyond what Congress intends. By allowing the agencies to directly retain fee revenue, this law has created incentives for ever-more and ever-higher fees and has undermined Congressional oversight authority.

In a press release issued at the time the FLREA was passed, its original sponsor, U.S. Representative Ralph Regula, expressed his intent:

> "As passed by Congress, H.R. 3283 would limit the recreation fee authorization on the land management agencies. No fees may be charged for the following: solely for parking, picnicking, horseback riding through, general access, dispersed areas with low or no investments, for persons passing through an area, camping at undeveloped sites, overlooks, public roads or highways, private roads, hunting or fishing, and official business. Additionally, **no entrance fees will be charged for any recreational activities on BLM, USFS, or BOR lands.** This is a significant change from the original language. The language included by the Resources Committee is much more restrictive and specific on where fees can and cannot be charged." **[emphasis in original]**

At the time of its passage we predicted, accurately as it turns out, that the Forest Service and BLM would use the ambiguities and weaknesses in the language of the FLREA to perpetuate and expand the broad and unlimited fee programs that they had implemented under the Fee Demo authority. Today the agencies are pushing past the limitations specified in the law because of the perverse incentives it creates to maximize revenues at the public expense.

The FLREA, as Representative Regula correctly stated, contains a number of provisions designed to protect free access. There are prohibitions on charging Standard Amenity or Expanded Amenity fees "(A) Solely for parking, undesignated parking, or picnicking along roads or trailsides. (B) For general access…(C) For dispersed areas with low or no investment…(D) 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. (E) For camping at undeveloped sites that do not provide a minimum number of facilities and services…(F) For use of overlooks or scenic pullouts. (G) For travel by private, noncommercial vehicle over any national parkway or any road or highway established as a part of the Federal-aid system…" [Section 803 (d)(1)].

It also states in Section 803 (e) (2) "The Secretary shall not charge an entrance fee for Federal recreational lands and waters managed by the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service.

Section 803 (f) (4) says that Standard Amenity fee areas must contain all of six minimum amenities: Designated developed parking, a permanent toilet facility, a permanent trash receptacle, an interpretive sign or kiosk, picnic tables, and security services.

USDA-Forest Service and BLM Are Disregarding The Restrictions In The FLREA

In 2005, shortly after passage of the Federal Lands Recreation Enhancement Act with its new restrictions, we launched a nationwide grassroots survey of Forest Service and BLM fee sites. We asked our members and supporters to visit fee areas near their homes,

observe whether they comply with the provisions in the new law, and report to us those that did not. The resulting report documented over 300 non-compliant sites, and was submitted to the Senate Energy and Natural Resources Committee in late 2005. Since then, Forest Service officials have provided further information to the Senate showing that there are at least 738 non-compliant sites on the National Forest system, plus an unknown number on the BLM.

There are clear patterns to the excesses in implementation by the BLM and Forest Service. They have created a category of fees that was not authorized by Congress called "High Impact Recreation Areas." They are charging fees at thousands of trailheads that provide access to dispersed undeveloped backcountry, and they are stretching the Special Recreation Permit authority to cover virtually any type of recreational activity. As a result, de facto entrance fees are controlling access to huge tracts of public land.

Non-compliant fee programs fall into three broad categories:

1) "High Impact Recreation Areas" (HIRAs)

The agencies are using a category called a HIRA that does not appear anywhere in the law. A HIRA is an area—often a large area—where a fee is required for all access, whether or not any facilities or services are used and regardless of how spread out the facilities might be. Under the guise of HIRAs, Standard Amenity fees are being charged for driving scenic roads and stopping at scenic overlooks, for entrance to huge tracts of land and access to dispersed backcountry, and for groups of sites with low or no federal investment. Information submitted to the Senate by the Forest Service in 2005 showed that a full 75% of Standard Amenity fee sites within HIRAs don't have all six of the amenities the law requires.

The language in the FLREA stating that a fee can be charged for an area with certain amenities, but failing to define how large the "area" can be, opened the door to HIRAs. Examples:

- In Southern California, 31 HIRAs comprising almost 400,000 acres have been established on four National Forests.
- At Mt Lemmon, on the Coronado National Forest in Arizona, virtually the entire 256,000-acre Santa Catalina Ranger District has been declared a HIRA and fees are being charged for picnicking, dispersed undeveloped camping, roadside parking, snowplay in undeveloped areas, trailheads, and restrooms.
- In Colorado, the Arapaho-Roosevelt National Forest has declared two HIRAs. The first is at Mt Evans, where Colorado State Highway 5 has become a de facto toll road and entrance fees must be paid to the Forest Service in order to enjoy a scenic overlook, hike into the adjacent designated Wilderness, or simply use a portajohn. The other is the

36,000-acre Arapaho National Recreation Area where entrance fees are charged for access to six trailheads, five picnic areas, and five boat launches.

2) Special Recreation Permits

The section of the Federal Lands Recreation Enhancement Act that authorizes Special Recreation Permit fees says, in its entirety:

> *"The Secretary may issue a special recreation permit, and charge a special recreation permit fee in connection with the issuance of the permit, for specialized recreation uses of Federal recreational lands and waters, such as group activities, recreation events, motorized recreational vehicle use."*

That language was carried forward essentially unchanged from what was in the Land and Water Conservation Fund Act, the law that governed federal recreation fees from 1965 through 1996.

Under LWCFA, the agencies used their Special Recreation Permit authority mainly for large gatherings such as weddings and competitive events. But under FLREA the same language is being interpreted in an entirely new way. It's being stretched to cover ordinary uses such as a family hiking trip, an individual ride on an OHV or mountain bike trail, and general access to backcountry by foot, horseback, or hand-carried boat.

SRPs are being used to generate revenue at places and for uses that can't be shoehorned into the requirements for Standard Amenity and Expanded Amenity fees. Where it isn't practical, or sometimes isn't even legal, to provide any amenities, requiring a permit is the method being used to elicit fee revenue from people who visit areas that have little or no federal investment. The restrictions under the other fee categories, such as not charging for children under 16, do not apply to SRPs. Examples of excesses under the permit authority include:

- Wayne National Forest, Ohio: Fees are charged for 406 miles of OHV, mountain bike, and horse trails. The trail fee was raised from $5 to $12 in April, 2007.
- Cedar Mesa, Utah: BLM requires a fee for all hiking in 400,000 acres that includes 7 remote canyons and 11 trailheads. This is a completely undeveloped area that received at last report only 8,283 visitors a year and has no maintenance backlog. The fee for backcountry day-hiking

there was increased this year from $3 to $5 and applies to both adults and children.

- Both the Forest Service and BLM are requiring SRPs and charging fees, to both adults and children, for entry to designated Wilderness Areas that are completely primitive by definition. Examples include Boundary Waters Wilderness, MN (USFS), Aravaipa Canyon, AZ (BLM), Paria Canyon-Vermillion Cliffs Wilderness, UT/AZ (BLM), and above 10,000 feet elevation at Mt Shasta Wilderness, CA (USFS). All of these fees have either been increased or are proposed for an increase since the FLREA was enacted.

- Hidden fees: In some places, like the Alpine Lakes, Glacier Peak, and Pasayten Wildernesses in the Pacific Northwest, there is no charge for the wilderness permit itself, but vehicles parked at wilderness trailheads must display a Northwest Forest Pass, which amounts to the same thing.

The WSNFC is not opposed to permit systems where access must be limited to protect fragile resources or to distribute use. But charging a fee for such permits creates a barrier that discourages people from visiting some of the most beautiful places in America—places they own and have an equal right to visit regardless of their financial resources. Permit fees are being used to sidestep the provisions in the FLREA against charging for backcountry use, dispersed and undeveloped camping, use of roads and trails, and passing through without use of facilities.

3) Trailhead Fees

At thousands of sites nationwide, citizens are being charged a fee to park their vehicle at a trailhead or simple staging area and go for a hike, horseback ride, or to use an OHV trail. The law prohibits charging a fee solely for parking, or for passing through a fee area without using the facilities, yet that is exactly what trailhead fees are for.

Examples of trailhead fees:

- White Mountain National Forest, New Hampshire: A Parking Pass is required at 44 trailheads and river access sites. These fees control access to most of the Forest's backcountry.

- Forest Service Region 6: In the Pacific Northwest, a pass is required at over 500 day-use sites, mostly trailheads, on twelve National Forests. On the Mt Baker-Snoqualmie National Forest alone, there are more than 100 fee trailheads.

- Southern California: An Adventure Pass is required at 22 trailheads on the Angeles National Forest, 12 trailheads on the Cleveland National Forest, 13 trailheads on the Los Padres National Forest, and 49 trailheads on the San Bernardino National Forest.

- Colorado: Winter recreationists at Vail Pass must purchase a pass before accessing 55,000 acres of backcountry by snowmobile, snowshoe, or cross-country ski, even though the parking area and toilet facilities are provided by the Colorado Department of Transportation as a rest area for travelers on Interstate 70.

Fee trailheads, whether developed or not, are being used to prevent free access to dispersed backcountry and undeveloped camping, and to charge for general access, in violation of the FLREA.

The Public Is Being Excluded From Fee Decisions

We have grave concerns about the establishment and effectiveness of the Recreation Resource Advisory Committees that are mandated in the FLREA. These RRACs are composed of 11 members, mainly from various public land user groups and the outfitter/guide community. Their purpose is to advise the Secretaries of Interior and Agriculture on the implementation, expansion, increase, or elimination of fees.

While the groups represented on the RRACs come from diverse interests, almost all are beholden to the Forest Service and BLM for continued access for their particular activity on public land. They must go along with agency fee proposals or face potential consequences that would be detrimental to the groups they represent. That gives the RRAC members little leeway in weighing various proposals concerning fees, and gives the agencies undue influence over the committees' recommendations.

The Forest Service and BLM have shown no inclination to use the RRACs to bring the general public into decisions about fees. Both agencies instigated new fees and permits at many sites before any RRACs were established. Since choosing their committee members in 2007, the meetings have been publicized poorly or not at all. Meetings have been held by teleconference and have had their dates and locations changed on short notice. All meetings to date have been on weekdays during the day, and many have lasted two days, making it unlikely that members of the public can attend. Agendas are not always provided in advance, and minutes aren't posted until months after the meetings, if at all. Over 500 new and increased fees have received RRAC approval in the past year, and hundreds more are on upcoming agendas. The RRACs are operating as rubber stamps for virtually all agency fee proposals.

Whether or not the agencies can implement a particular fee should be determined by a clear, concise law that spells out exactly what is allowed and what is not. Before Fee Demo we had such a law—the Land and Water Conservation Fund Act—and advisory committees were unnecessary.

These Recreation Resource Advisory Committees are appointed by the agencies, controlled by the agencies, and are obediently doing the agencies' bidding. As a vehicle for public participation, they are a sham.

Fee Excesses Make Criminals Out Of Citizens

These documented excesses by the Forest Service and BLM cause special concern when viewed in the context of the severe criminal penalties for failure to pay FLREA fees. The law allows the agencies to charge either a Class A or Class B misdemeanor and specifies prima facie guilt for the driver, owner, and all occupants of a vehicle failing to display a required pass. Although first offenses are capped at a $100 fine, they still create a criminal record, and subsequent offenses are subject to penalties up to $100,000 and/or 1 year in jail. Despite the fact that many fees do not meet the requirements of the FLREA, a citizen who fails to pay a $5 fee to hike into a Wilderness Area or ride on an OHV trail, or who does pay but fails to display the pass correctly, or who loans their vehicle to a friend or family member who fails to pay, risks a permanent criminal record, heavy fine, and potential jail time.

This policy of "guilty until proven innocent," combined with the questionable legality of HIRA fees, deserves to be scrutinized by the judicial system, but that has so far been prevented from occurring. In the first HIRA criminal case to go to court, on the Coronado National Forest in Arizona, the defendant made public her intent to appeal her anticipated conviction for not paying the HIRA fee because she had only used an undeveloped area. The Forest Service dropped that charge just days before her trial, preventing the legal issues surrounding HIRAs from being explored by the courts. Since then, the Coronado and other Forests have been aggressively citing and prosecuting citizens for not paying fees that are specifically prohibited in the law, such as roadside parking fees, because the offense charged occurred within a HIRA.

Fee Programs Continue The Same As Under Fee Demo, Despite Increased Restrictions In The FLREA

The framers of the FLREA said that it would provide stronger protections for public access to public land than the Fee Demo program did, and compliance with the provisions of the FLREA was mandatory as of December 8, 2004. By now, the Forest Service and BLM should have dropped fees at thousands of Fee Demo sites. Instead, they continue to charge non-compliant fees nationwide. The BLM has not dropped a single one of their fee programs, and in fact shortly after the FLREA was enacted they added 38 new fee sites in six states, without following the requirements for public participation specified in the FLREA.

In a June 2005 press release the Forest Service said,

> *"All Forest Service units that charged recreation fees under the old fee demo program reviewed their current fee sites and determined whether or not their sites meet requirements as outlined under [the new law]. As a result approximately 500 day-use sites will be removed this year…"*

At that time we obtained the list of 480 sites referred to, and compared it to the list of over 4,500 Fee Demo sites the Forest Service had reported as in effect on December 8, 2004. Their claim that 480 sites were being dropped because of the new law turned out to be unsupportable because more than half of those sites either were never listed as Fee Demo sites, were already closed, are within HIRAs that continue to charge fees to enter the larger area, will have fees reinstated as soon as planned improvements are completed, or for some other reason. Examples:

- Six "dropped" sites along the Paint Creek Corridor on the Cherokee National Forest in Tennessee had already been closed due to flood damage.
- Four "dropped" sites on the Humboldt-Toiyabe National Forest in Nevada eliminated their shoulder-season fees but retained fees during prime season when concessionaires operate them.
- The "dropped" Squire Creek trailhead on the Mt Baker-Snoqualmie Forest in Washington had already been closed because its access road is washed out.
- For the Justrite Campground on Idaho's Payette National Forest, the Forest Service comments state, "Fees were authorized for this site under [Fee Demo], with the intention of charging fees when improvements were made. They were not made, so fees were never charged. Site is being dropped from fee program for now." So it never did charge fees, but there are plans for it to become a fee site in the future.
- On the Bridger-Teton Forest in Wyoming, the Bridge and Lynx Creek Campgrounds were listed as dropped sites with the comment, "We stopped charging a fee here several years ago."

All of these were included in the 480 sites that the Forest Service claimed were Fee Demo sites that did not meet the new criteria. It is hard not to conclude that the Forest Service was deliberately misleading the public and the Congress with this list. Since 2007, the Forest Service and BLM have implemented at least 545 new and increased fees. There are now even more fee sites than existed under Fee Demo, despite the increased restrictions in the law.

The True Cost Of Fee Programs Is Impossible To Know

The Federal Lands Recreation Enhancement Act says,

> *"The Secretary may use not more than an average of 15 percent of total revenues collected under this Act for administration, overhead, and indirect costs related to the recreation fee program by that Secretary."*

The first FLREA Triennial Report to Congress, issued for FY2005, openly admitted that the average cost of collection across all agencies was 18.7%, and the "cost of collection" category does not even attempt to capture administrative and indirect costs.

The Forest Service and BLM are spending well over the law's 15% limit on fee program costs. Significant expenses, such commissions paid to private vendors for pass sales, and

the expenses of the Recreation Resource Advisory Committees, are not accounted for as program overhead.

Since FLREA replaced Fee Demo there has been no detailed financial information about fee programs reported to Congress. Under Fee Demo, reports were required annually and there was a line item in every annual report for every individual project, with year-by-year comparison data. Now reports are required only every three years and since project-level data is not required, it is no longer either reported or tracked.

Examples of financial problems:

- In Colorado the Forest Service reports they had $1.5 million in FLREA revenue in 2006 and are budgeting about $50,000 per RRAC meeting. They have had two meetings so far with a third scheduled for June. So the RRAC alone is costing at least 10% of fee revenue. The Forest Service is paying those costs out of appropriated funding and they are not counting them toward the 15% cap, even though the sole purpose of the RRAC is to make recommendations about fee programs.

- The Forest Service sells a great many passes through private vendors without accounting for the vendor commission as a cost of collection. The southern California National Forests sell 60% of Adventure Passes through vendors, who take a 10-20% commission. That commission is not included in their cost of collection.

- At Indian Peaks Wilderness on the Arapaho National Forest, 20% of overnight camping permits are sold through a private vendor who keeps 100% of the revenue, putting that program over the 15% limit before they account for a penny of in-house costs.

- In the Triennial Report, BLM reported gross fee revenue of $13.3 million with a 9.6% cost of collection. That was a dramatic drop in cost of collection from 15.8% in the previous report, but it was merely the result of re-categorizing some costs, not a true reduction, and did not reflect administrative overhead.

- The Government Accountability Office reported in GAO-06-1016 that the federal land management agencies were carrying unobligated fee revenue of almost $300 million. In the Forest Service, 107 units had an unobligated balance, and 63 of those, or 58%, had more than a year's worth of fee revenue in their unobligated fund. At BLM 56 units had unobligated funds, and 26 of those, or 46%, had more than a year's revenue on hand.

These problems—the lack of detailed and accurate financial information, shifting of costs arbitrarily from one category to another, paying fee program overhead from appropriated funding, and collection of fees far in excess of actual needs—make it impossible for either the public or Congress to know the true cost of federal recreation fee programs.

Despite Fees, Recreation Facilities Are Being Closed

Under a Forest Service program originally called Recreation Site-Facility Master Planning but since renamed Recreation Facility Analysis, developed recreation sites such as campgrounds and picnic areas are being rated as to their sustainability and marketability. Those that are not profitable (including unprofitable fee sites) will be either closed to public use or have their amenities removed and be downgraded to dispersed use sites. BLM's Cost Recovery policy calls for much the same thing.

One Colorado Forest Service official was quoted in the press saying

> *"In our development sites we've been told they need to pay for themselves, or we need to get rid of them."*

The article goes on to say that the official,

> *"attributed the cuts to decisions made in Washington. 'Last December, Congress passed fee legislation in the Federal Land Recreation Enhancement Act,' he said, adding that the local district rangers were simply following federal orders. 'They're being forced to do a lot of what they're doing here,' he said. 'As for doing nothing, we can't legally do that. So there's no easy answer.'"*

In fact, the FLREA has no provisions mandating that recreation facilities pay their own way in fees or be closed. That is an agency policy that is very unpopular with Americans and the agencies are trying to lay the blame for it at Congress's feet. These doctrines are currently being incorporated into Forest Travel Plans and Forest Management Plans and into the Resource Management Planning process in the BLM. While Congress has not vetted these policies, they are being applied nationally with enormous implications for how the FLREA will be implemented and for the overall availability of diverse recreational opportunities on our public lands.

RS-FMP/RFA and Cost Recovery will certainly have a negative impact on local tourist economies as recreational opportunities disappear. They will restrict public access to public land despite the fact that the agencies still receive a vast majority of their funding from the taxpayer through Congressional appropriations. The implication is that most, if not all, recreational sites, areas, and uses must be profitable, through fees and permits, or they will be closed.

These policies conflict with the language in the FLREA protecting the public's right to access dispersed areas of public land and to use minimally developed sites without the burden of fees. The doctrine of "fee or close" represented by the RS-FMP/RFA and Cost Recovery leaves the agencies' ability to comply with the FLREA in question.

Fee Demo and the Federal Lands Recreation Enhancement Act Have Failed

Americans are being double taxed because too much appropriated funding is diverted into administrative overhead, leaving local managers to raise their own budgets with fees. Visitation to public lands has declined, local economies are being harmed, low-income and working families are being excluded, and law-abiding citizens are being turned into

criminals. Nature Deficit Disorder in children has become a national concern, and childhood obesity is an increasingly serious problem. Financial accountability has been lost and Congressional oversight has been weakened.

I think we should be making it easier, not more difficult, for Americans to visit and enjoy their public lands. Low-income and working families shouldn't be faced with financial barriers if they want to take their kids for a hike in a National Forest. The health and spiritual benefits of outdoor activities and access to nature shouldn't be reserved only for those with cash. Studies have shown over and over that even a modest fee deters many Americans from using their public lands. That's not good for America and it's eroding public support for the land management agencies.

Resolutions of opposition to Fee Demo and/or FLREA have been sent to Congress by the state legislatures of Colorado, Oregon, California, New Hampshire, Idaho, Montana, and the Alaska House of Representatives. Dozens of county and municipal elected bodies across the nation, as well as hundreds of organized groups, oppose fees for general access to National Forests and BLM lands or for recreation in undeveloped areas. Congressional action to remove these excessive fees and restore public access to public land will be applauded from coast to coast.

Federal recreation fees began as an experiment, and the experiment has failed. Speaking on behalf of Western Slope No Fee Coalition and so many others who can not be here today, I urge the distinguished Members of this Subcommittee to take decisive action to remedy the excesses and abuses that are occurring on our public lands. The only way to accomplish that, I believe, is to repeal the Federal Lands Recreation Enhancement Act and return to the policies that served America well for thirty years under the Land and Water Conservation Fund Act. A bill that would achieve that goal is pending now in the Senate and I hope a companion bill will be introduced soon in the House.

Thank you for the opportunity to present these facts and observations. I am available for any questions you may have.