

# WESTERN SLOPE NO-FEE COALITION

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October 27, 2011

Gene Dodaro, Comptroller General  
Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Comptroller Dodaro:

I was pleased to learn that GAO has been requested by three Members of Congress to conduct an updated audit of the recreation fee programs administered by the federal land management agencies under the Federal Lands Recreation Enhancement Act. My organization has closely followed the recreation fee issue since the enactment of Fee Demo in 1996, and I am familiar with the two previous GAO audits. I am certain the new study will rise to the same exemplary level of objectivity and thoroughness as its predecessors, and I thank you and your staff in advance for your work.

In the previous two audits, GAO gathered program-wide information from the agencies and then chose representative examples to be visited and examined in depth. I am writing because I am familiar with some examples that are of particular public concern and I think may be of particular interest to GAO also. When selecting local programs for study I hope you will consider including some or all of these.

## **FEE PROGRAM COSTS IN EXCESS OF STATUTORY LIMITS:**

**Mt Evans High Impact Recreation Area, Colorado (USDA-FS)** - The Arapaho-Roosevelt National Forest has a fee station at the bottom of Colorado State Highway 5, the Mt Evans highway. They charge \$10 per vehicle to proceed beyond that point, unless the operator says they will not be stopping for any reason.

Revenue from the Mt Evans program, according to their 2006 Business Plan<sup>1</sup>, averaged \$244,000 over the period 2003-2006. The section that shows Cost of Collection states, *"The total cost of collection has been approximately 20%-25% of the project revenue. This percentage should decrease in the coming years as capital improvement costs decrease."*

The accompanying charts, however, show that the Cost of Collection over those four years averaged \$70,349, almost 29%. Taken year-by-year, Cost of Collection reached a high of 38% in 2004 and a low of 25% in 2003. The "capital improvement costs" referred to consisted of the purchase, in 2003 and 2004, of automated pass vending machines. The cost of those devices

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<sup>1</sup> The 2006 and 2007 Mt Evans Business Plans are part of the Administrative Record that was submitted by the Forest Service to the Colorado District Court in *Scherer v U.S. Forest Service* (Case number 08-cv-00917, Administrative Record documents E00323 (2006) and E00423 (2007)).

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alone accounted for 18% and 17% of gross revenue in those two years. In the following two years, capital improvement costs were shown as zero, but instead of declining, Cost of Collection was 27% in 2005 and 26% in 2006.

This level of expense, for Cost of Collection alone, exceeds the FLREA's statutory limit of 15% of gross revenue for "administration, overhead, and indirect costs." That is before even including such costs as National, Forest, or Regional overhead, printing passes and making signs, or enforcement of fee payment.

In the Mt Evans Business Plan for the following year, 2007, Cost of Collection was no longer reported at all. No revenue or expense information has been released to the public since 2007.

**Red Rock Pass, Arizona (USDA-FS)** - In 1997, the Coconino National Forest implemented a pass requirement under Fee Demo on 160,000 acres surrounding Sedona. When the more restrictive FLREA replaced Fee Demo in 2005, the Forest continued exactly as before, ignoring the new restrictions. In 2010 a hiker challenged a Violation Notice he received for non-payment of the fee and received a decision from the federal magistrate judge dismissing his Violation Notice. The judge ruled that the Red Rock Pass program was out of compliance with federal law in several respects. The Forest undertook a review of the program.

As part of that review the Forest revealed that Red Rock Pass vendors retain about 22% of gross revenue (including about 50% of revenue paid through vending machines). This vendor commission/discount is not accounted for as a cost of the fee program. In GAO-03-470 a similar method of accounting for vendor commission/discounts by Forests in the Pacific Southwest and Pacific Northwest regions was identified as not in compliance with federal accounting standards or the USDA financial manual. The Forest Service dismissed the violation as minor because the particular fee programs under scrutiny in that study sold very few passes through vendors at that time. On the Coconino National Forest, however, vendors sell *all* Red Rock Passes, so the impact is significant. GAO said in the 2003 audit that not reporting vendor commissions as a fee program cost understates both revenue and expenditures and makes it impossible to tell whether the Forest is in compliance with the FLREA limit of 15% of gross revenue for administrative, overhead, and indirect costs.

### **FEE AND PASS-ACCEPTANCE POLICIES THAT ARE NOT IN ACCORDANCE WITH STATUTORY AUTHORITY**

**Gunnison Gorge Wilderness, Colorado (BLM)** – A permit and fee are required in order to enter (on foot or horseback) this congressionally designated Wilderness Area. The fee is payable into a fee tube at various trailheads and permits are self-issued in unlimited numbers. This amounts to a de facto "entrance fee," which is not in accordance with the prohibition on BLM entrance fees at 16 U.S.C. 6802(e)(2). BLM claims authority for this under 16 U.S.C. 6802(h), which authorizes permit fees for "specialized recreation uses" of federal lands. BLM is interpreting that section of the FLREA statute as allowing fees for "non-commercial individual or group use of special areas."<sup>2</sup> In doing so, BLM is circumventing the prohibition on entrance fees by taking congress's limited authorization to charge fees for "specialized recreational uses" and turning it inside out to arrive at an exactly opposite meaning, i.e. permission to charge for *all* uses of "special areas." The term "special areas" does not appear in the FLREA.

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<sup>2</sup> Source: Presentation by BLM to Colorado's three BLM Recreation Resource Advisory Committees, 2011.

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**Tonto Pass, Arizona (USDA-FS)** - The Tonto National Forest requires a “Tonto Pass” at about 50 recreation sites that, under FLREA, should be classified as Standard Amenity Fee sites. Interagency passes must be accepted at all Standard Amenity Fee sites according to 16 U.S.C. 6804(a)(1). On the Tonto, however, those who hold interagency passes must purchase an additional daily or weekly Tonto Pass.

Holders of lifetime senior and disabled interagency passes get a 50% discount on the Tonto’s daily/weekly fees. The FLREA does not contain authority for this 50% discount. Instead it specifies that senior and disabled passes should be accepted as payment in full for Standard Amenity Fees.

Holders of annual interagency passes, which should also cover Standard Amenity Fees in full, are required to “upgrade” their pass every year for an additional \$15 before they can use it as an annual pass on the Tonto.

There does not seem to be any authority in the FLREA for the Tonto Pass program.

### ADDITIONAL ISSUES

Besides these specific examples I hope that GAO will examine the following issues in the new study.

- Forest Service concessionaires are increasingly being allowed to lease federal day-use sites, trailheads, and parking lots, and charge fees for access to them.

Some of these are Standard Amenity Fee-compliant facilities but have never been approved as fee sites under the public participation requirements in the FLREA (i.e. public notice and comment, Federal Register publication, and review by a Recreation Resource Advisory Committee). Other sites are not in compliance with the Standard Amenity Fee requirements and/or are in violation of the Prohibitions on fees enumerated at 16 U.S.C. 6802(d).

Concessionaires that operate these federally owned sites are allowed to reject federal passes and in some cases are being required, as part of the bidding process, to set up their own parallel private pass systems. The Forest Service’s policy<sup>3</sup> is to exempt concessionaire-operated facilities from having to comply with FLREA. This causes a lot of confusion and anger among the public who hold federal passes that they were told would be honored on all federal land. Examples occur on the Coconino, Tonto, Pike-San Isabel, Los Padres, Mt Hood, and Deschutes National Forests.

- The Forest Service’s financial statements for FY2010 and 2009 were audited independently by KPMG-LLP. In Section B, Note 12 of the audit they report and comment on Earmarked Funds, including the “Recreation Fee Demonstration Program.” The audit report says:

**“Recreation Fee Demonstration Program**

The **Recreation Fee Demonstration Program** Treasury account 12X5268 receives deposits of recreation fees collected from projects that are part of the **Recreation Fee Demonstration** program. These monies are retained and used for backlog repair and maintenance of recreation areas, sites or projects. These

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<sup>3</sup> Source: Forest Service memo, File Number 2340/2720-2, March 1, 2007

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funds are also used for interpretation, signage, habitat or facility enhancement, resource preservation, annual operation, maintenance, and law enforcement related to public use of recreation areas and sites. **The Recreation Fee Demonstration Program is authorized by § 315 of Title III General Provisions of Public Law 104-134: Recreation Fee Demonstration Program 16 U.S.C. 4601-6a.” (Emphasis added)**

This is startling because the Recreation Fee Demonstration Program was repealed in 2004 when the FLREA was enacted and replaced it. FLREA made substantial changes to the Forest Service’s recreation fee authority compared to Fee Demo, but the auditing firm does not seem to have been made aware of that. Shouldn’t KPMG have reviewed the Earmarked Funds under current law, not repealed law? Is the Forest Service concealing information from or misleading their independent auditors?

Thank you for taking this information and my concerns into consideration when GAO conducts the new study of federal recreation fees.

Sincerely,

Kitty Benzar  
President

cc: Members of Congress Scott Tipton, Mike Coffman, Steve Pearce