

The Recreation Fee Demonstration Program and Beyond

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THE RECREATION FEE DEMONSTRATION PROGRAM REPRESENTS A MAJOR MILESTONE in the evolution of public land management. It brings into question the purposes for which national parks and federally managed lands exist and creates radically altered opportunities for thinking about how to fund this nation's land management agencies. Fee-Demo, as this program is commonly known, forces us to question whether outdoor recreation is a "public good" that should be looked upon as a birthright available equally to all Americans. Fee-Demo, many believe, represents a dramatic transitional step that threatens to forever alter, in undesirable ways, the look and feel of America's public lands and our relationships to those lands.

To understand Fee-Demo, it is necessary to know something about how this important legislation became the law of the land. For practical purposes, Fee-Demo's history begins with the formation of the Outdoor Recreation Resources Review Commission (ORRRC) in the early 1960s. The ORRRC report, released in 1962, officially acknowledged that recreation and tourism on America's federally managed public lands were activities of burgeoning personal and economic importance. The report led to the passage of legislation that would better provide for the supply and management of recreational opportunities on public lands. Perhaps the most significant law that resulted from the ORRRC is the Land and Water Conservation (LWCF) Act of 1965, and the most significant provision of that law with respect to any discussion of Fee-Demo was contained in 16 U.S. Code 460((6a)). That provision authorized the charging of certain limited recreation

user, access, and entrance fees on federally managed public lands and expressly prohibited the charging of all others. Revenues generated under the 16USC460((6a)) authority were to be deposited into a special LWCF account and were unavailable for direct use by land managers.

From 1965 until Fee-Demo was authorized in 1996 as a rider to the Department of the Interior appropriations bill, recreation fees were controlled by the provisions of 16USC460((6a)). Fee-Demo temporarily superceded them. With the passage of the Federal Lands Recreation Enhancement Act (FLREA) in 2004 as a rider to the omnibus appropriations bill, Fee-Demo was revoked and the 16USC460((6a)) provisions were permanently repealed. The primary purpose of both Fee-Demo and FLREA was the repeal of the 16USC460((6a)) provisions, or so this author would contend. Repeal of this provision would not only permit land managers to collect fees for a wider

range of products, goods, and services, repeal would also permit land managers to retain the fees they collect. By providing this alternative funding mechanism, Congress was free to slash allocated funding and to force land managers to become reliant upon user fees, concessionaire fees, public-private partnerships, volunteerism, and other funding.

The first attempt to repeal the provisions of 16USC460l(6a) dates to 1982 when the Office of Management and Budget (OMB) called for cutting appropriated budgets for each of the federal land management agencies by an immediate 25% while granting agencies new authority to charge, collect, and retain recreation user fees. The concept was intended to imbue an entrepreneurial spirit within the bureaucracy and to provide land managers with a mechanism for replacing federal funding with direct payment derived from park and forest visitors. The bill called for the eventual phasing out of appropriated recreation-related funding and a near complete shift to user fees.

While presiding over a Senate hearing on June 27, 1985 (Senate Hearing 99-303), Senator Malcolm Wallop (R-WY) said of this legislation, "The direct offset from a maintenance budget of fees collected is close to one of the most idiotic concepts I've heard in a long time." In his testimony, Senator James McClure (R-ID) said, "I am certain that by now everyone has seen the April 15 gray covered document entitled Senate/Administration Deficit Reduction plan. It compares the National Park System with Disneyland and the San Diego Zoo. That would certainly come as a surprise to Teddy Roosevelt, John Muir, and Stephen Mather. OMB will probably next propose that we put golden arches in Canyonlands."

The second attempt to pass recreation

user-fee legislation occurred in 1992 with the introduction of S. 2505 (102nd Congress). The bill called for repealing the 16USC460l(6a) provisions, instead authorizing a multi-agency "America the Beautiful Passport," and granting the agencies broad powers to enter into challenge cost-sharing partnerships with any "State or local government, public or private agency, organization, institution, corporation, individual or other legal entity."

It is worth noting that upon retiring from the Senate in 1995, Wallop founded Frontiers of Freedom, a think tank dedicated to defending constitutional rights and promoting a limited government agenda. One year earlier, the Cato Institute published *Privatizing the Planet*, which asserts that "privately owned resources have been better protected than their politically managed counterparts" and concludes that "the air, the water, most species of mammals and fish and public lands have no private owners, [therefore] they have few effective protectors and defenders." Wallop's support of recreation user fees should, and must, be understood in this light, and thus a further discussion of this viewpoint, in direct reference to Fee-Demo, is in order.

Numerous pro-privatization think tanks have expressed strong support for recreation user fees. Extremists seek to halt all funding of the national parks and public lands in order to create incentives to ensure that these lands become self-funding at a minimum, and preferably profitable. These views would have land managers commodify each aspect of the land under their control. Managers would then sell or lease rights to those commodity values and keep locally all monies received.

For example, a particular forest or park might contain potentially marketable trees,

minerals, water, and opportunities for recreation and tourism. Each of these potential products would be marketized and the power of the market would be permitted to determine which uses prevail and dominate. The need for recreation user fees under this system is straightforward. The ability to charge fees permits the commodification of recreation and provides the mechanism that allows recreation to become competitive with alternative land uses. It appears likely that the first two attempts to enact recreation user-fee legislation were heavily reflective of this thinking.

In 1996, a third recreation user-fee bill was introduced, H.R. 2107 (105th Congress). That proposal proved no more popular than either of its predecessors and was never so much as put to a vote. In the end, however, a vote proved unnecessary. The chair of the Interior Appropriations Committee simply inserted the key provisions of H.R. 2107 into the Interior appropriation bill. Fee-Demo became law without debate and largely unnoticed.

With the passage of Fee-Demo, the 16USC460/(6a) provisions were temporarily superceded and the four agencies covered by this legislation (National Park Service, Bureau of Land Management, Forest Service, and U.S. Fish and Wildlife Service) were, for the first time ever, able to charge, collect, and retain recreation fees for a wide range of recreational activities. With the passage of Fee-Demo, the proverbial genie was free at last.

The purpose of Fee-Demo

Some have claimed that the purpose for the “demonstration” was to give the public a chance to weigh in on the subject and to tell their elected officials, via federal agency comment cards, surveys, and other mecha-

nisms, whether they supported the pay-to-play concept. In reality, the purpose of the “demonstration” was to give the federal land management agencies a chance to demonstrate to Congress that a wider range of recreation fees than had been authorized by the provisions of 16USC460/(6a) could be effectively charged and collected. Further purposes were to allow the agencies to demonstrate the merits associated with allowing fees to be retained and ultimately spent at the recreation sites where they were collected.

As originally authorized, Fee-Demo fees were promoted as genuine “use fees.” In my home state of Oregon, almost every forest unit required payment of a separate and unique fee. The stated purpose of the fee was that those who use a particular site, for example a picnic area, pay a fee for that use of that area. The fee would be collected on site and after subtracting the costs of collection, overhead, and enforcement, whatever portion of the original payment remained would be reinvested into that recreation site. The visitor who paid a fee could reasonably expect that on some future visit, the restrooms would be cleaner or the picnic tables more plentiful than would have been the case had he or she not paid the fee.

The public was informed that these fees were intended to be supplemental to normal appropriated funding and to provide benefits above and beyond what would otherwise be possible.

As things happened, the original concepts drifted in dramatic ways between the introduction of Fee-Demo in 1996 and its transmogrification in 2004. For openers, strenuous objection was raised to the multiplicity of new fees being charged. Representative Peter DeFazio (D-OR), became a frequent and outspoken critic of the pro-

gram. On more than one occasion DeFazio told Congress of how as a visitor to the forests in his own district, he was required to pay a fee at one site and then, were he to drive a few miles to another recreation site, he would be required to pay another fee. Without exception, common wisdom came to say that the public hated being “nickel and dimed” with a multiplicity of fees and so the original site-specific fees morphed into regional fees.

The Northwest Forest Pass was created to resolve this concern. For payment of a single annual or day-use fee, the holder of that pass could use nearly 1,500 recreation sites in Oregon and Washington. Similarly, the Adventure Pass was created and the holder of that pass could leave his or her vehicle unattended on any of four forests in Southern California. Vehicles that did not display the Adventure Pass were subject to ticketing and a fine of up to \$100 could be levied. As enforcement was based upon ticketing vehicles and not individuals, those entering on foot or bicycle were free to continue to do so. Persons driving through these forests were permitted to do so as long as they did not get out of their vehicles.

With only relatively minor additional tweaks during the next seven years, the program was implemented more or less as described. The methods of enforcement varied from forest to forest and within some forests enforcement methods varied over time. The federal agencies were encouraged to be creative and to try new ideas. The purpose of the demonstration was to show what was possible, yet all the while efforts were made not to engender unnecessary opposition to a program that was created with considerable support from within agencies, the recreation industry, and the federal government. The expectation was

that the program would be a success and that upon completion of the demonstration phase, a permanent fee program could be implemented which built upon the successes of the test phase and which avoided the pitfalls uncovered.

Yet something unexpected happened. Each year during the demonstration program, each of the four agencies involved was required to submit a report to Congress in which it itemized such things as revenues generated, costs of collection, rates of compliance, amount of revenues expended upon projects, and the like. What their reports showed were mixed results at best. Some agencies, notably the National Park Service, which has a long history of charging fees under the authority of 16USC460l(6a), seemed to have few major problems. Compliance was generally high, partly because national park visitors were accustomed to paying a fee and partly because most parks had discrete entry points at which fees could be efficiently charged and collected. Other agencies, especially the Forest Service, had serious problems—so serious that Congress was unwilling to permanently authorize the program. Instead, Congress would extend the demonstration for another year or two in order to give those lagging agencies additional time in which to demonstrate success. That never happened. But after nearly eight years, in the final hours before the fiscal year 2005 omnibus appropriations bill was voted upon, and over the strenuous objections of the four Senators most directly responsible for the public lands impacted by the program—Conrad Burns (R-MT), Pete Domenici (R-NM), Craig Thomas (R-WY), and Larry Craig (R-ID)—Fee-Demo moved to its next phase.

Were Fee-Demo a non-controversial

issue, a fair and accurate recounting of the historical facts would lead the reader directly to a firm understanding of the subject. Fee-Demo, however, became a highly controversial issue, with opposition coming from all directions. Over 300 recreation and conservation groups came out in formal opposition to the program. Cities, counties, and even entire states (New Hampshire, California, Oregon, and Colorado) passed resolutions and memorials in which opposition to the program was expressed to the land management agencies and to the president of the United States. Multiple bills were introduced in the U.S. House of Representatives to terminate the program, though no such bill was ever permitted a legislative hearing. It became clear to everyone connected with this issue that not only was Fee-Demo controversial, but that the reasons given for supporting or opposing the program varied dramatically, depending upon whom you asked.

The official explanation(s)

There is no single official explanation of the purpose for the Recreation Fee Demonstration Program. Reminiscent of the evolving explanations for going to war in Iraq, there are many such explanations for Fee-Demo and those reasons have, over time, steadily changed. The original explanation was that user fees paid by visitors to specific recreation sites would provide future benefits localized at those sites. The concept was that Fee-Demo would be a true user fee and would supplement allocated funding.

More recent explanations have suggested that the fees would help maintain recreation facilities in light of on-going budget reductions, or that fees would be used to provide upgrades to facilities, or perhaps be

used to provide the kinds of new recreational experiences that today's younger, action-oriented, thrill-seeking visitor demands. Additional arguments have, at times, suggested that it was simply the right thing to ask users to share in the cost of providing recreational resources for their enjoyment. The price of a day on public lands was often compared to the price of a movie and popcorn. Land managers have challenged park visitors to ask themselves, "Isn't a day on public lands worth as much as a day a Disneyland?" They've claimed that fees reduce vandalism, reduce littering, and encourage people to have greater respect for their public lands. There's also the value-added society argument that suggests the higher the fee, the greater the value perceived. All of these have, at one time or another, been put forth as the official explanation for why the Recreation Fee Demonstration Program exists.

The force behind the program

The ORRRC report recognized the growing importance of recreation and tourism on federally managed public lands and painted, in broad-brush strokes, a vision for how these interests could be better accommodated. As a follow-on to the ORRRC, Ronald Reagan formed the President's Commission on Americans Outdoors in 1985. That commission's report, published in 1987, created a more specific action plan for recreation infrastructure development while calling for greater reliance upon public-private partnerships, increased volunteerism, challenge cost-share agreements, outsourcing, concessionaire facilities, private reservation systems, Fee-Demo, and other innovative funding mechanisms.

Common arguments against Fee-Demo

Fee-Demo is most frequently said to be exclusionary and discriminatory in recognition of the fact that it disproportionately affects lower-income persons. Fee-Demo is a regressive tax that many have also referred to as “double taxation.” Some say that the simple act of paying alters one’s relationship to the land and adversely impacts one’s experience and one’s sense of responsibility to the resource. Others have pointed out that the act of paying changes one’s expectation such that the more one pays, the more one expects. A few have pointed out that higher expectations necessitate the expenditure of additional money to meet those expectations and that an upward spiral of ever-higher fees results. The overwhelming majority fear that pay-to-play recreation will result in increased development of commercially oriented recreational products, goods, and services. Many see Fee-Demo as part of a larger privatization agenda. A handful recall Reagan’s original purpose of replacing allocated funding with user fees. Almost everyone who is opposed to Fee-Demo quite simply feels in his or her gut that free access to wild nature is an American birthright.

Common arguments in support of Fee-Demo

Perhaps the most common argument is that those who use the resource should pay for it, while those who do not, should not. Some suggest that the ability to charge and locally retain fees provides market incentives that will ensure that customers receive the kinds of services for which they are willing to pay. A few have sought to use market pricing to reduce overuse of popular areas and to spread use to lesser-known areas and to off-peak periods. Free-market and Liber-

tarian advocates support Fee-Demo for ideological reasons. Pragmatic conservationists support assigning economic value to recreation so that it can displace logging, mining, or other competitive uses of the lands. Interest groups with high requirements for developed recreation facilities support the concept of paying to play, so long as the fees they pay provide them with direct benefits. The Bush Administration is a particularly strong champion of Fee-Demo because the program helps to shrink government while promoting the vision of an “ownership society.”

The Wild Wilderness view

I am the executive director of Wild Wilderness, a grassroots recreation and conservation organization that, since 1991, has sought to preserve, protect, and enhance opportunities for the enjoyment of low-impact, non-motorized recreation on America’s public lands. Since 1997, Wild Wilderness has opposed the Recreation Fee Demonstration Program and has looked upon Fee-Demo as the greatest single threat to the interests of those we represent.

When we and others who believe as we do look at the controversial issue of recreation user fees, we see a history of very intentional cuts to recreation budgets which, over time, have created a funding crisis for which a solution was described in detail in the report of the President’s Commission on Americans Outdoors. We see motorized and commercial recreation interests conspiring with free-market and Libertarian ideologues to radically redefine the meaning of outdoor recreation and to dramatically reinvent the way in which public lands are funded and managed. We see a concerted effort on the part of public resource managers and their private-sector

partners to commercialize, privatize, and motorize America's great outdoors. We see the creation of an incentive system that will color the judgment of land managers and provide perverse incentives to pursue management decisions based upon bottom-line accounting. We see a de-democratization of the American commons wherein what once was wild and free will be neither of these things. What we see is the commodification of leisure.

Conclusions

The issue of charging recreation user fees for use of federally managed public land is neither simple nor straightforward. It has a history and it has engendered strong support and equally strong opposition. It is an issue that is as contentious today as when it was first proposed more than twenty years

ago. By all indications, that reality will not change anytime soon.

Yet more important than Fee-Demo is the context in which this program exists. Opponents of Fee-Demo have long referred to it as "the nose of the camel in the tent." They have claimed that the overarching purpose of Fee-Demo was to bring the profit motive to the management of outdoor recreation on America's public lands, thus setting the stage for increased commercialization and privatization. If Fee-Demo is the nose, then the recently introduced legislation currently titled the "Federal Recreation Policy Act of 2005" should be viewed as the beast's torso. Formal introduction of that legislation will do much to put Fee-Demo into its proper context and reveal what lies beyond.

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