



United States Department of the Interior

NATIONAL PARK SERVICE

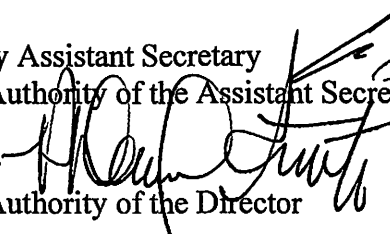
1849 C Street, N.W.
Washington, DC 20240

MAY 14 2019

DECISION BRIEFING DOCUMENT

To: Secretary

Through: Principal Deputy Assistant Secretary
Exercising the Authority of the Assistant Secretary, Fish, Wildlife and Parks

From: Deputy Director 
Exercising the Authority of the Director

Re: National Park Service (NPS) Recreation Fee Spending

STATEMENT OF ISSUE:

The National Park Service (NPS) proposes to discontinue an internal management practice which has generally limited the use of Federal Lands Recreation Enhancement Act (FLREA) funds to pay for permanent staff and to empower park superintendents to utilize FLREA funds to hire permanent employees engaged in FLREA related work, subject to the limitations contained in FLREA and the limitations described below.

BACKGROUND:

The Bureau of Land Management, Bureau of Reclamation, U.S. Fish and Wildlife Service and NPS are authorized to collect certain fees under the FLREA. The Act further provides that these Bureaus are authorized to retain such fees. In addition, FLREA provides that those fees remain available for expenditure without further appropriation until they are expended.

Congress has articulated very specific purposes for how this money may be expended. The statutorily allowable purposes include terms that have ordinary meanings, which include:

- A. repair, maintenance, and facility enhancement related directly to visitor enjoyment, visitor access, and health and safety;
- B. interpretation, visitor information, visitor service, visitor needs assessments, and signs;
- C. habitat restoration directly related to wildlife-dependent recreation that is limited to hunting, fishing, wildlife observation, or photography;
- D. law enforcement related to public use and recreation;
- E. direct operating or capital costs associated with the recreation fee program; and
- F. fee management agreements, established under section 6805(a) of this title, or a visitor reservation service.

See 16 U.S.C. §6807(a). Consequently, the ability of NPS to pay employee salaries from FLREA funds is limited to the extent that they are performing these functions.

These specified allowable purposes include terms that are broad in their authority and generally plain in their meaning. For NPS purposes, the statutory provisions allow or facilitate:

- Repair, which generally means to fix or mend a thing suffering from damage or a fault;
- Maintenance, which generally means the process of keeping something in good condition;
- Facility Enhancement (related to visitor enjoyment), which is generally understood to be an intensification, increase, or further improvement of the quality or value of the facility;
- Visitor access, which generally means approaching or entering a place, or the right or opportunity to use or benefit from something;
- Health, which generally means the state of being free from illness or injury;
- Safety, which generally means the condition of being protected from or unlikely to cause danger, risk, or injury;
- Interpretation, which is generally understood to be the action of explaining the meaning of something or someone related to the visit;
- Visitor Information, which is generally understood to be providing visitors with facts about something or someone related to the visit;
- Visitor Service, which is generally understood to be advice or assistance that enhances visitor experience;
- Signs, which is generally understood to mean a notice that is publicly displayed giving information or instructions in a written manner or symbolic form; and
- Law enforcement related to public use and recreation, which is self-explanatory.

Since January 2019, there has been significant attention on the FLREA program and the use of these funds. Emphasis has been on the use of available fees at specific parks in a manner that fits squarely within the specified purposes in FLREA. The NPS expects our employees to be cognizant of the requirements and limitations of FLREA, before expending funds, to ensure that these funds are used only for authorized purposes.

Recreation fee revenue collected under the authority of FLREA increased 67%, from \$179,469,000 to \$299,686,000 between Fiscal Year (FY) 2013 and FY 2018. We expect revenues will continue to increase. For some parks, recreation fee revenue has increased significantly as a percentage of ‘base’ funding available to operate the park in any given year.

For example:

- Arches/Canyonlands National Parks – retained recreation fee revenue has increased from 31 percent to 65 percent of base funding available
- Joshua Tree National Park – retained recreation fee revenue has increased from 48 percent to 110 percent of base funding available

- Mount Rainier National Park – retained recreation fee revenue has increased from 18 percent to 41 percent of base funding available
- Rocky Mountain National Park – retained recreation fee revenue has increased from 41 percent to 82 percent of base funding available
- Sequoia and Kings Canyon National Parks – retained recreation fee revenue has increased from 20 percent to 39 percent of base funding available
- Shenandoah National Park - retained recreation fee revenue has increased from 31 percent of base funding available to 49 percent of base funding available
- Zion National Park – retained revenue has increased from 66 percent of base funding available to 100 percent of base funding available

As recreation fee revenue and associated projects continue growing, park staff are increasingly strained to support both day-to-day operational duties and work to properly plan for and execute recreation fee projects. This is particularly true for major deferred maintenance (DM) and construction projects.

Parks have generally accomplished the project work that cannot be handled by permanent NPS employees by hiring term employees. This avenue of accomplishing the work has been limited significantly by an Office of Personnel Management (OPM) finding that successive use of term employees, rather than permanent employees, in these parks was an inappropriate use of the term hiring authority. OPM issued an audit report to NPS in October 2016, finding that the term appointment authority, provided by 5 CFR 316.301(a), is limited to four years. Consequently, NPS must look to utilizing more permanent employees where the work requirements appear to be long term needs.

Current NPS Management Practices

While current NPS management practices allow some parks to pay for permanent staff with FLREA fees, they do not allow the use of FLREA project funds to pay for permanent staff generally. FLREA legislative authority does not provide a limitation on funding permanent staff, provided those staff are exclusively meeting FLREA purposes; the existing constraints are grounded in internal NPS management practices, not law. These NPS practices were adopted with an attempt to strike some balance between spending on day-to-day operations and longer-term “investments.” However, NPS has reassessed that balance and believes an adjustment is appropriate.

Under current practice, parks and programs may only use FLREA revenue for the following permanent positions:

- Cost of collection – Cost of collection includes direct operating or capital costs associated with collecting, securing, transporting, and remitting funds. The NPS internal recreation fee policy sets a cap on the cost of collection expenses. That cap is \$37,500,000 servicewide. As recreation fee revenue grew, NPS moved from a percentage cap on cost of collections to a dollar value to reflect the fact that revenue growth was the result of increased fees rather than new fee sites requiring additional staff or infrastructure.

- Washington and Regional Office fee program management – The NPS typically spends about 3.5 percent of recreation fee revenue on indirect costs associated with the recreation fee program. These indirect costs include some permanent positions at headquarters and regional offices related to management activities such as credit card transaction security, Recreation.gov, the point of sale system, fee collection audits, and internal controls over recreation fee revenue expenditures.
- Park fee project and program management for approved parks:
 - Between 2008 and 2015, 10 parks received approval to charge fee project and program management positions to the park recreation fee account. Few restrictions or requirements were imposed on parks that were granted these approvals.
 - In 2016, the NPS Chief Financial Officer placed a moratorium on approving additional permanent park positions until the Budget Office and Fee Management programs could develop and implement additional internal controls over the hiring of permanent positions. The process outlined in Option 1 in this memo was developed in late 2017 to provide that oversight and allow NPS to lift the moratorium with additional controls in place.
 - In February 2018, the NPS Comptroller’s office began entertaining new proposals for new permanent positions from parks meeting the criteria outlined in Option 1. The moratorium on additional permanent park positions is still in place.

CONSTRAINTS ON SECRETARY OR DEPUTY SECRETARY FOR ACTION (include Office of Solicitor input if legal rationale is provided as a limitation on action):

FLREA identifies broad categories of projects and activities that may be funded. The NPS already funds some permanent employees with FLREA funds.

PLEASE INDICATE IF TIME SENSITIVE:

The decision on this matter is not time sensitive.

OPTIONS FOR CONSIDERATION:

OPTION 1 – Concur with the NPS initiative to discontinue the internal management practice intended to prohibit the use of FLREA funds to pay for permanent staff, to empower park superintendents to manage FLREA funds consistent with FLREA requirements, and to implement reasonable internal controls to avoid future anti-deficiency risks.

The NPS proposes to allow additional park permanent positions to be charged to recreation fees. This expansion would further empower park managers to hire the appropriate mix of positions to meet the broad, authorized purposes of FLREA. The expansion would also impose

accountability requirements on the 10 parks that received these approvals between 2008 and 2015. Parks must collect sufficient recreation fee revenue to cover their cost of collection, meet the 55% DM requirement, and cover proposed permanent salary costs. The NPS estimates the number of parks that meet these requirements to be less than 30, to include:

Likely to Utilize New Authority

Acadia National Park
Arches/Canyonlands National Park
Assateague Island National Seashore
Badlands National Park
Bryce Canyon National Park
Castillo de San Marcos National Monument
Denali National Park
Death Valley National Park
Gateway National Recreation Area
Glacier National Park
Glen Canyon National Recreation Area
Joshua Tree National Park
Mount Rainier National Park
Muir Woods National Monument
Olympic National Park
San Juan National Historic Site
Shenandoah National Park
Sleeping Bear Dunes National Lakeshore
Yellowstone National Park

Approved in 2008; Likely to Expand Use of New Authority

Golden Gate National Recreation Area
Grand Canyon National Park
Grand Teton National Park
Haleakala National Park
Hawaii Volcanoes National Park
Lake Mead National Recreation Area
Rocky Mountain National Park
Sequoia-Kings Canyon National Park
Yosemite National Park
Zion National Park

The park superintendent and regional directors must comply with all of the internal controls required to ensure proper use of FLREA funds and to manage potential anti-deficiency risk, including:

- The park will prepare a list of proposed permanent positions to be paid out of the park's 80 percent retained recreation fee revenue.

- The park will annually submit a 5-year plan of projects for its 80 percent retained FLREA revenue, indicating the nexus between FLREA projects and permanent positions funded with FLREA funds. In every year of the 5-year plan, the park will identify the FLREA projects that justify a FLREA funded permanent position.
- In both the 5-year plan, and in the year of execution, the park superintendent commits that the park will individually meet or exceed the 55% deferred maintenance target, and a commensurate net decline in the park's deferred maintenance backlog will be reflected.
- In both the 5-year plan and the year of execution, the park superintendent commits that the park will meet or exceed the 35% carryover target.
- The park will not shift current ONPS funded positions to FLREA projects, which would result in a decrease of the park's ONPS base funds for facilities operations and maintenance.
- In the event that FLREA authority is not re-authorized, or the park experiences a short- or long-term drop in revenue, the regional director and the park superintendent agree to absorb the costs of the proposed permanent positions within the park or regional office base funds, or to exercise authorities such as furloughs and reductions in force.
- The park will make all appropriate records available for periodic audit and if FLREA funded project charges are found to be out of compliance, the park may be required to remove all inappropriate charges. The park will be required to absorb the permanent positions into its base budget or exercise authorities such as furloughs and reductions in force.
- The park will annually prepare a brief summary of past year spending, including planned vs actual costs of permanent positions, deferred maintenance projects' status, and other key recreation fee spending issues.

Views of other DOI Bureaus (if applicable): N/A

Consistent with relevant EO's or SO's? (specify): N/A

Secretarial Priorities Advanced by Option:

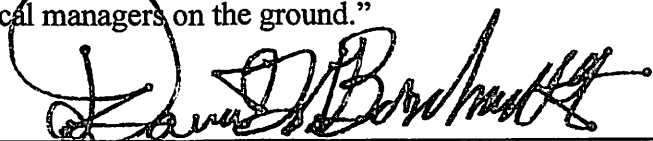
- Enhancing the visitor experience at our national parks and public lands by better meeting our infrastructure and maintenance needs.
- Delegating greater authority and accountability closer to the front line in our organization and modernizing the Department to better meet the needs of today and tomorrow.

Outside Perspectives - Members of Congress; Federal, State, Tribal, Territorial, and local government; and Citizen groups:

The NPS use of recreation fee revenue generated considerable attention after the Secretary’s decision to use recreation fee revenue to fund park operations to provide basic visitor services during the December 2018/January 2019 lapse in appropriations. Some in Congress expressed support for the decision while others in Congress had questions about whether it was appropriate to use recreation fee revenue to fund park operations that were normally funded from the Operation of the National Park System (ONPS) appropriation. Outside stakeholders commented on the decision as well – some were supportive, and others were not. For example, the National Parks Conservation Association expressed concern that use of recreation fee revenue for daily park operations would jeopardize parks’ ability to fund projects such as deferred maintenance. The Property and Environment Research Center (PERC) expressed support for the decision.

Before the lapse in appropriations, PERC had most recently expressed its thoughts on the use of recreation fee revenue when it pointed to NPS fee spending policies in its April 2018 testimony before the Senate Energy and Natural Resources Committee as one factor limiting progress on the deferred maintenance problem. “FLREA was intended to allow park managers to decide how fee revenues should be spent to adequately maintain parks. Yet, in practice, local park managers often face restrictions from the National Park Service on the use of fee revenues for certain maintenance and operational purposes. The agency imposes a variety of internal controls and red tape that complicate the use of fee revenue by park superintendents—limitations that are not described in the FLREA statute. These include prohibiting the use of fee revenues to support permanent employees, various costly approval processes for fee revenue expenditures, and requirements that certain amounts be spent on specific purposes determined by agency officials in Washington rather than local managers on the ground.”

Concur With This Option



OPTION 2 – Continue current NPS management practices that do not permit the use of FLREA funds for permanent employees.

Under this option, NPS would take no action. The NPS would continue the moratorium on permanent positions related to recreation fee project and program management and execution.

Views of other DOI Bureaus (if applicable): N/A

Consistent with relevant EO’s or SO’s? (specify): N/A

Secretarial Priorities Advanced by Option:

More FLREA funds would be retained for deferred maintenance projects, however, in some cases, the design and implementation of those projects may be delayed where required staff resources are not available.

Outside Perspectives - Members of Congress; Federal, State, Tribal, Territorial, and local government; and Citizen groups:

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Concur With This Option _____