

KEITH CUNNINGHAM-PARMETER

ATTORNEY AT LAW

245 WINTER ST SE, SALEM, OR 97301

November 25, 2019

SUBMITTED VIA EMAIL TO WILLAMETTERECFEECOMMENTS@USDA.GOV

Willamette National Forest
ATTN: Recreation Fees
3106 Pierce Parkway, Suite D
Springfield, OR 97477

RE: Comments on Central Cascades Special Recreation Permit Fee

I am writing to comment on the Forest Service's two-page press release dated October 8, 2019, entitled "Forests Seek Input on a Special Recreation Permit Fee."

I am an Oregon resident who hikes and backpacks regularly in the Three Sisters Wilderness and Mt. Jefferson Wilderness. On an average year, I take one or two multi-day backpacking trips with friends or family in these areas.

I have read the press release listed above, which proposes charging the public \$5 per overnight entrant, per night at every entry point in the above wilderness areas during the permit season, in addition to charging a separate \$6 "processing fee." The press release also proposing charging people to day hike in these areas.

If enacted, these fees will makes it harder for me to access these lands. My trips are typically planned only a few days in advance. The complexity and cost caused by the Central Cascades permits, fees, reservations, and quotas, will deter me from hiking and backpacking in these areas.

I believe that the proposed special recreation permit fees potentially violate the following laws:

- Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706 as a final agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
- Federal Lands Recreation Enhancement Act (FLREA), 16 U.S.C. § 6801 et seq.
- National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq. and Civil Rights Act, 42 U.S.C. Ch. 21 and Executive Order 12898.

- National Forest Management Act (NFMA), 16 U.S.C. § 1601 et seq. and forest-specific plans, including the Northwest Forest Plan, the Willamette National Forest Plan, and the Deschutes National Forest Plan.
- Wilderness Act, 16 U.S.C. § 1311 et seq.

This fee proposal is unprecedented. Willamette National Forest and Deschutes National Forest are the first national forests in the United States to try to implement a fee system across three wilderness areas that will charge all overnight users *and* a large percentage of day users (approximately 25% of trailheads) across over 450,000 acres. No wilderness area in the country charges people at all overnight access points and approximately one-quarter of day-use access points.

The amount of the fee is exorbitant. For example, for an 8-person group that seeks to complete a 10-day backpacking trip of the area, the fee will jump from its current amount of \$0 to \$406 (\$5/person/day + \$6 reservation fee).

The proposed fee violates FLREA, which prohibits charges for general access, hiking, dispersed camping, and other uses. In addition, the proposed fee violates FLREA, which prohibits the Forest Service from charging an entrance fee. There is no way to enter the three wilderness areas for overnight use without paying this entrance fee.

The exceptions to the FLREA's prohibition on hiking fees do not apply here.

- Walking, backpacking, and ordinary camping are not “special recreation uses” within the meaning of the FLREA. The plain language of the statute is specifically limited to specialized recreation uses such as group activities, recreation events, and motorized recreational vehicle use. Activities such as hiking, walking, camping are wholly outside the scope of the *special* activities Congress intended to cover.
- The Northwest Forest Pass (NWFP) covers some of the areas at issue in this proposal. The Forest Service has stated that under the current proposal, people who pay the special permit fee will not need to separately display at NWFP. However, the NWFP will still be required at certain trailheads affected by this decision. For example, the NWFP will be required during the off-season and at certain day use areas that do not charge a separate special permit fee. Unfortunately, not all of these areas contain the six amenities that the FLREA requires. The FLREA forbids the Forest Service from requiring people to display a NWFP at any site that lacks the six amenities.
- For persons who solely park at a site without using any of the required amenities, FLREA prohibits a fee.

- The proposal will charge persons age 12 and over. But the FLREA prohibits charging such fees to people under 16 years of age.
- The proposed reservation fee of \$1 for day use and \$6 for overnight use is a prohibited reservation fee under FLREA.

The public process requirements for the proposed fee have not been satisfied. The Forest Service has not provided a sufficient opportunity for public involvement or participation in the development of recreation fees, has not established guidelines for public involvement, and has not established guidelines for how the agency will demonstrate on an annual basis how it will inform the public of the use of recreation fee revenues.

I attended the open house that the Forest Service hosted in Eugene on November 21. There were approximately 60 people present and several rangers. Matt Peterson, the Forest Service's Project Coordinator (hereinafter "Project Coordinator"), spoke to the public, made a PowerPoint presentation, and then initiated a question-and-answer session with the group. Approximately 11 minutes into the Q&A session, the Project Coordinator abruptly ended the Q&A, even though not all questions were answered and even though not all questioners were acknowledged. I thought it was strange that the Forest Service only allowed the public 11 minutes (out of a 90-minute meeting) to ask questions and comment as a group.

The bulk of the Project Coordinator's presentation focused on the need to restrict access to the affected wilderness areas to protect them from increased use. The FLREA forbids the Forest Service from using fees to "limit the use of recreation opportunities only to areas designated for collection of recreation fees." Yet the current proposal does just that. It requires 100% of overnight entrants to pay a fee through the website recreation.gov. There is no way to recreate overnight in these areas without paying a fee online. As such, the current proposal violates the FLREA because the Forest Service plans to use fees to limit recreational opportunities.

Notice documents have been wholly insufficient. The Forest Service's October 2019 press release stated that it was seeking authorization through FLREA and sought "the public's engagement on the specifics of the fee structure." To this day (the final date for submitting comments), the only documents that are available to the public online are: (a) a two-page press release; and (b) a three-page Frequently Asked Questions (hereinafter "FAQ") pdf.

But these documents do not provide the public with necessary information to meaningfully comment or participate in the fee development process. In addition, the public cannot comment and participate because it lacks information about the Forest Service's rationale for the fee or the fee amount. We have no information about how the Forest Service developed these fees or how the proposed fees compare to fees in other areas. We also lack any information on which to comment about cancellations, weather problems, how the Forest Service will address day-of or last minute passes, or how low income people will be included in the pass system.

In March 2019, the Forest Service said: “The public will have the opportunity to learn more about and comment on each of these items . . . annual pass option . . . volunteer pass . . . passes/permits to underserved communities.”

During the Eugene meeting, the Project Coordinator said, “I’m purposefully being vague” about the details of a volunteer pass. During the same meeting, the Project Coordinator said, “We’re not sure yet” about the annual pass, but that it was unlikely to happen. Finally, during the Eugene meeting, the Project Coordinator said, “We’re still working on this,” when commenting on how the Forest Service would address the problem of affordability for low-income communities. All of these statements were made four days before the public’s comment deadline. In short, the Forest Service has not honored its March 2019 promise that the “public will have the opportunity to learn more about and comment on each of these items . . . annual pass option . . . volunteer pass . . . passes/permits to underserved communities.”

At the Eugene meeting, the Project Coordinator said that the Forest Service was hoping to release a more detailed plan at an undetermined date in the future and that the comment deadline would be extended to an undetermined date in the future. But as of today (the final day for submission), the Forest Service still has not released any additional plan documents, and its website still lists today (11/25/19) as the comment deadline.

Without a substantive proposal to evaluate, the public cannot meaningfully comment, and the Resource Advisory Committees (RACs) will not be able to receive a proper proposal. As such, any recommendation that the RACs make to the Forest Service can only be arbitrary, capricious, or contrary to law.

In addition to the foregoing problems with the process, the need for fees has been insufficiently identified, discussed, analyzed, or mitigated in the available documentation. Likewise, the effects of fees on dispersal and quotas have been insufficiently discussed, analyzed, or mitigated in the available documentation.

Similarly, the socio-economic effects of these fees have been insufficiently identified, discussed, analyzed, or mitigated in the available documentation. The Forest Service has essentially said “you can go elsewhere” to people who cannot pay these fees. Obtaining a permit must occur in advance; the Forest Service has provided no indication how many free day-of permits will be available, how it will determine how many day-of permits will be free, and how it will decide who is entitled to a day-of permit. Applicants must have access to a telephone, computer, or a smartphone, as well as a credit card, bank account, or electronic payment mechanism. The Forest Service is “working with partner organizations and local libraries” but provides no details.

The Forest Service states it is accepting comments on how the fees should be invested, but it offers no proposal for the public to comment on. No investment plan means no fees can be charged.

In its FAQ page of October 2019, the Forest Service states that 80-95% of monies would be invested in wilderness management activities, trail maintenance, visitor education, and expanding work with volunteers and partners within the three wilderness areas. How much money does the Forest Service expect to generate? Why did it propose these reinvestments? All of this must be explained and supported.

In short, the Forest Service seeks public input but has no proposal to discuss its own project. The public cannot comment on a void. Please provide a detailed plan with supporting documentation, hold public meetings, and allow the public a meaningful opportunity to participate in this process.

Should the comment deadline be extended, or if additional materials become available, I reserve my right to modify, amend, supplement, or re-submit my comments. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

/s/

Keith Cunningam-Parmeter
Attorney at Law