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Comments: CCWS fee proposal comment

Willamette National Forest

ATTN: Recreation Fees

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To whom it may concern:

I hike, backpack, and mountain climb in the Three Sisters, Mt. Jefferson, and Mt. Washington wildernesses a few times per year. My trips to these areas are not usually planned more than a few days in advance. The Central Cascades Wilderness Strategies Project (CCWSP) fees will make it more difficult for me to visit and use these public lands, due to onerous requirements for permit reservations (the details of which proposed reservation system have not been published by the Forest Service) and the added cost of the permit when other publicly accessible lands are free to access.

The CCWSP is an unprecedented proposal by the Forest Service to limit and charge for access to public lands. All 450,000 acres of wilderness will have restricted access and will require a permit (entry) fee for overnight use. Day use will have similar restrictions at 19 trailheads. Land managers at the Forest Service who worked on this project are on record saying there is little precedent for such broad restrictions to public access.

The Forest Service has claimed authorization under the Federal Lands Recreation Enhancement Act (FLREA) to charge a special recreation permit (SRP) fee for the CCWSP permits. The Forest Service's proposal to charge SRP fees to enter the wildernesses described in the CCWSP is a violation of FLREA, which reads (in part) as follows:

§ 6802 (e)(2): Prohibited Sites

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.

§ 6802 (h): Special recreation permit fee

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.

This fee would be levied for ordinary recreation, such as hiking or backpacking. Such ordinary recreation does not meet the plain language definition of "special recreation" described by Congress in FLREA.

In 2005 testimony before Congress, Mark Rey, the Undersecretary for Natural Resources and Environment, USDA, stated the following (emphasis added):

This authority is also used to issue special recreation permits to individuals for activities such as, white water river trips, off-highway vehicle (OHV) use and, in a limited number of cases, wilderness use. These permits are issued when we provide additional

services beyond normal operation and maintenance, including constructing and maintaining specialized trails for OHVs and providing wilderness experiences in areas that receive high use.  
<https://www.govinfo.gov/content/pkg/CHRG-109shrg26620/html/CHRG-109shrg26620.htm>

Larry Craig, Chairman of the Subcommittee on Public Lands and Forests, stated during that panel that the Congressional intent of SRPs was as follows:

[W]hen Congress authorized the Federal Lands Recreation Enhancement Act we included the category of special recreation permits to deal with a limited number of activities on off-highway vehicle parks and outfitter guides.

As the CCWSP permits would be required for non-commercial and non-vehicular use, and absent any other claim by the Forest Service that "additional services beyond normal operation and maintenance" would be provided (such as amenity services covered by the Standard and Expanded amenity fees), it appears that the Forest Service is claiming authority to charge SRP fees for "providing wilderness experiences." This is supported by the CCWSP EA, wherein the Forest Service claimed the Wilderness Act requires that they ensure an arbitrary level of "solitude" in these wildernesses, and as a result they are required to limit public access to forest lands if such solitude is found to be lacking.

The 1964 Wilderness Act defines Wilderness as having "outstanding opportunities for solitude or a primitive and unconfined type of recreation" (emphasis added). As even crowded trails are inherently both primitive and unconfined, it is clear that solitude is not in itself a sole and inviolable requirement for public lands in order for them to meet the definition of Wilderness. Therefore, the Forest Service's claim that they are authorized to charge SRP fees to maintain a level of solitude required by the 1964 Wilderness Act is demonstrably false.

Given that the SRP proposed by the Forest Service for the CCWSP would apply to ordinary recreation such as hiking and backpacking, and that "providing wilderness experiences" by enforcing solitude is neither justified by the Wilderness Act's definition of Wilderness, nor by the FLREA's definition of "special recreation," it is clear that the Forest Service's proposal to charge a SRP fee for the CCWSP constitutes the creation of an entrance fee, which is expressly prohibited by FLREA § 6802 (e)(2). As the CCWSP allows for no overnight entry to any of the affected wildernesses without paying a SRP fee, this is, absent any further considerations whatsoever, a de facto entrance fee for ordinary overnight users, and again is expressly prohibited by FLREA § 6802 (e)(2).

In addition to being a violation of FLREA, the Forest Service's proposal to charge fees for permits in the wilderness areas in question would likely adversely impact underserved populations. The CCWSP Final Decision states:

Executive Order 12898 on environmental justice requires federal agencies to identify and address any disproportionately high and adverse human health or environmental effects on minority and low income populations.

The Forest Service routinely claimed, in both responses to comments on the EA, and in the Final Decision, that socioeconomic impacts of the proposed fees were either negligible or outside the "scope" of their current analysis, and social justice considerations would be further addressed at a later time. No further information has been made available regarding the Forest Service's analysis of potential socioeconomic impacts to underserved users, nor how these effects might be mitigated. (In responses to comments and during Objector meetings, the Forest Service discussed subsidized passes, but no specifics have been provided.) I contend that any increased financial requirement is an undue burden on underserved populations, as even the requirement to apply for a subsidized pass creates an inequality between users of different socioeconomic means. While National Parks charge entrance fees, their level of infrastructure and development vastly outstrip our public forest lands, and

charging entrance fees for the National Parks is legal under FLREA. As general wilderness areas comprise the vast store of undeveloped Wilderness, charging fees for general access to these lands is thusly an unjustified burden on marginalized populations, and a barrier to access that discriminates against them based on their socioeconomic status.

Not only does the Forest Service's proposal to charge fees for the CCWSP fail to account for social justice considerations, the proposal fails to meet requirements for public participation in the process. During the objection process to the EA, the Forest Service claimed that they would later propose an Annual Pass option, as well as clarify how the permit quotas would be administered, including specifying the proportion of permits that would be reservable vs walk-in, whether unclaimed permits would be released to the public, whether Northwest Forest Pass holders would still need to pay the SRP fee, etc. In March 2019, the Forest Service claimed the public would "have the opportunity to learn more about and comment on each" of those considerations. However, the October 2019 Press Release regarding the CCWSP SRP fees did not give any further details, aside from the proposed dollar amounts, about how the fee system would be administered. As one can imagine, it is difficult to provide meaningful comments on a fee system that has not been comprehensively proposed. FLREA § 6803 states that public participation is required prior to the establishment of a new recreation fee. As the Forest Service has failed provide a specific and detailed proposal for how the CCWSP fees would be administered, the public participation requirement of FLREA has not been met.

The October 2019 press release proposes a \$3.00 per person, per day, fee for day use, and a \$5.00 per person, per night, fee for overnight use. Reservations on Recreation.gov would further require processing fees of \$1.00 per person, per day, or \$6.00 per overnight group. These proposed fee amounts are exorbitant, and would create an undue burden on visitors to these public lands. The Forest Service has again failed to provide any proposal for an annual pass, meaning an adult who hikes in these wildernesses at fee-requiring trailheads once per weekend, every week of the year, would be charged \$156.00 in access fees. (Compare this to a person currently accessing the same areas using the Northwest Forest Pass, which is \$5.00 per day, but is also offered as an annual pass for \$30.00 per year, less than 1/5 the annual price of the CCWSP fee.) The Forest Service has also not justified why the per-person fee would need to be more for overnight users than for day users, nor why the processing fee would need to be more for an overnight group than for a single day user (reservations using an online system would be processed identically regardless of how many names are entered on a screen). The differing prices give the appearance of a blatant cash grab exploiting group size, and with no statutory justification.

To summarize, the Forest Service has proposed vague, unprecedented, exorbitant, and unjustified "special recreation" access fees for a group of wilderness areas in Central Oregon. FLREA explicitly prohibits the charging of entrance fees to Forest Service lands. FLREA also clearly defines the Special Recreation Permit as applying to specific, unusual types of commercial or vehicular recreation. The Forest Service's claim that the Wilderness Act of 1964 requires them to maintain "solitude" in wilderness lands is demonstrably false under the plain text of that statute. Therefore, the statutory texts of FLREA and the Wilderness Act clearly prohibit the Forest Service for charging either a fee for entering forest lands or for "providing wilderness experiences." Furthermore, the Forest Service, in its failure to provide a comprehensive proposal for the CCWSP fees, has failed to meet the FLREA requirement for public participation. The Forest Service has also failed in their obligation to address ongoing concerns about the potential for adverse social justice impacts on marginalized socioeconomic and cultural groups as a result of these fees.

Given the above analysis, the Forest Service has not met their statutory obligations and is legally prohibited from charging recreation fees for ordinary recreation, such as (but not limited to) hiking and backpacking, in the wildernesses affected by the CCWSP. This means the amount of the CCWSP permit fee must be zero. As FLREA stipulates under § 6802 (g)(2)(G), the Forest Service is legally allowed to charge an expanded amenity fee for reservation services. Therefore, the Forest Service is only allowed to charge for the reservation of permits on Recreation.gov. As the Forest Service has failed to issue a proposal as to the proportion of permits that would

be reservable, or how unreservable/uncollected permits would be administered, the Forest Service must issue such a proposal - with a new accompanying comment period, as required by statute - before any reservation fees can be levied. As the Forest Service is of the opinion that a reservation for day use permits could be administered for \$1.00, it is reasonable to conclude that all reservations for all permits can be administered for \$1.00. Therefore, the reservation fee, as authorized under the Expanded Amenity Fee provision of FLREA, cannot exceed \$1.00 per reservation, regardless of trip length or number of users.

As stipulated under FLREA § 6802 (d)(4): No restriction on recreation opportunities,

Nothing in this chapter shall limit the use of recreation opportunities only to areas designated for collection of recreation fees.

The Forest Service is therefore prohibited from limiting permit availability only to reservations made via Recreation.gov. This means that all nonreservable permits must be available without a fee for walk-in visitors at Forest Service offices. The Forest Service is also prohibited from mandating that the majority of permits be reservable, and thus eligible for a fee. As the public has a vested interest in spontaneous, free, and unfettered access to public lands, a reasonable allocation of permit availability would be 10% reservable and 90% nonreservable, in order to ensure broad availability for day-of or walk-in users on a first-come, first-served basis.

Should the comment deadline for this proposal be extended, or if additional materials become available, I reserve my right to modify, amend, supplement, or re-submit my comments at a later date.

Sincerely,  
Nat Bourne  
Portland, OR