

# Committee on Natural Resources

Rob Bishop, Chairman  
Mark-Up Memorandum

June 20, 2017

**To:** All Committee on Natural Resources Members

**From:** Majority Committee Staff – Terry Camp  
Subcommittee on Federal Lands (x 6-7736)

**Mark-Up:** **H.R. 289 (Rep. Doug LaMalfa)**, To authorize the Secretary of the Interior and the Secretary of Agriculture to issue permits for recreation services on lands managed by Federal agencies, and for other purposes.  
**June 22 & 27, 2017; 1324 Longworth HOB.**

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## **H.R. 289 (Rep. Doug LaMalfa), “Guides and Outfitters Act” or “GO Act”**

### **Summary of the Bill**

H.R. 289, introduced by Congressman Doug LaMalfa (R-CA-1), amends the Federal Lands Recreation Enhancement Act (FLREA) to reauthorize permitting authorities which are currently expiring annually and to streamline the recreation permitting process and allow for increased public access to recreation opportunities on federal lands. Among other provisions, the bill: 1) authorizes joint permits for trips crossing multiple agency boundaries; 2) sets permit fees; 3) prevents federal agencies from imposing fees on services delivered outside of federal lands; 4) authorizes temporary permits for new uses; 5) allows for the extension of existing permits to prevent interruption of services to the public; 6) authorizes the agencies to streamline permitting processes where appropriate; 7) provides categorical exclusions for previously studied uses to eliminate duplicative studies that delay permits; and 8) directs the use of permit fees.

### **Cosponsors**

Rep. Tom McClintock [R-CA-4], Rep. David G. Valadao [R-CA-21], Rep. Chris Stewart [R-UT-2], Rep. Mia B. Love [R-UT-4], Rep. Dan Newhouse [R-WA-4], Rep. Cynthia Liz Cheney [R-WY-At Large], Rep. Thomas MacArthur [R-NJ-3], Rep. Tom O'Halleran [D-AZ-1], Rep. Michael K. Simpson [R-ID-2].

### **Background**

In 2004, President George W. Bush signed the Federal Lands Recreation Enhancement Act (FLREA).<sup>1</sup> This Act provides the Secretary of the Interior and the Secretary of Agriculture the authority to issue a special recreation permit and charge a special recreation permit fee for specialized uses of federal lands, such as outfitting, group activities, recreation events, and motor

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<sup>1</sup> Pub. L. 108-447 (16 U.S.C. § 6801 et seq.).

vehicle use. Special recreation and special use permits are issued as a means to manage visitor use, protect natural and cultural resources, minimize recreational use conflicts, provide for the health and safety of visitors, and ensure a fair return to the government for commercial and other uses of public lands. Each year, the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) issue thousands of special recreation and special use permits for events, competitions, and outfitting and guiding on agency-managed lands.

Under FLREA, fees paid to the USFS and BLM by permittees, including outfitters and guides, are retained by the agency. Most of the revenue is supposed to be retained at the local site where the fees are collected. For USFS, BLM, and the Bureau of Reclamation (BOR), FLREA authorizes three types of fees: standard amenity fees; expanded amenity fees; and special recreation permit fees, collectively referred to as recreation fees. H.R 289 only affects the use of special recreation permit fees.

While the permitting and fee retention authority provided by FLREA has been positive in many ways, in the intervening years since FLREA's passage, a flood of complex rules, regulations, and court decisions have gradually increased the cost of permit administration. Both the USFS and BLM have responded by writing a "cost recovery" regulation which requires small businesses to pay for permit processing and environmental analyses when the time required for completing these processes exceed 50 hours. This cost recovery requirement along with complex planning requirements has virtually shut down public lands to new permitted uses which require extensive analysis unless they are programmatic.

Unfortunately, a full Environmental Impact Statement or an Environmental Assessment can cost tens of thousands of dollars, well beyond the affordability of many small businesses. Even permit renewals are subject to cost recovery and may total tens of thousands of dollars for a group of permits.

Recognizing issues with the current permitting process, the USFS recently announced it would be taking to action to modernize its recreation permitting process. These changes include investing in technology to improve business tools and data that support recreation special uses, and creating an electronic permit application process.<sup>2</sup> While the USFS should be commended for identifying and taking action to fix some of the problems associated with the current permitting process, there are still other issues that must be addressed.

H.R. 289 is intended to reduce the cost and complexity for those applying for and renewing special recreation and special use permits.

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<sup>2</sup> ["Forest Service Makes It Easier for Visitors to Enjoy National Forests and Grasslands."](#) U.S. Forest Service. USDA Office of Communications, 17 June 2016. Web.

## **Section-by-Section**

SEC. 1 – Short Title; Table of Contents; Definitions

SEC. 2 – Amends the FLREA authorization for special event, individual, outfitter and guide and competitive event permits and fees, and authorizes the use of categorical exclusions for previously studied uses or uses that are similar to those previously authorized provided they are not inconsistent with approved uses.

SEC. 3 – Authorizes land management agencies to issue one joint permit for USFS and BLM managed areas when a trip crosses multiple boundaries, provided that the permit holder will also have the option to apply for individual permits rather than a joint permit.

SEC. 4 – Establishes a basis for permit fees and limits those fees to activities on federal lands; Allows permit holders to publish the fees charged by the agencies; Eliminates fees on activities and services outside of federal land boundaries.

SEC. 5 – Amends FLREA to authorize the use of permit fees for permit administration, related recreation infrastructure and permit streamlining.

SEC. 6 - Amends and standardizes the USFS's basis for reviews of utilization of permitted capacity and allows existing permit holders to volunteer capacity for use by others without incurring a penalty for doing so.

SEC. 7 – Authorizes BLM and USFS to issue temporary permits for new uses for a term not to exceed 2 years.

SEC. 8 – Aligns federal land-management agencies policies regarding indemnification for state institutions and restrains the agencies from prohibiting the use of exculpatory agreements.

SEC. 9 - Requires the BLM and USFS to streamline processes for permit issuance and renewal including shortening application processing times and minimizing administrative costs; Authorizes programmatic environmental assessments and categorical exclusions to extent consistent with existing law; Authorizes online applications for permits.

SEC. 10 - Revises the BLM and USFS cost recovery regulations to ensure that the current 50-hour credit for work done on a permit applies to each permit authorization.

SEC.11 – Authorizes the extension of existing permits for no more than 5 years to avoid an interruption of services while the agency completes required documentation.

## **Cost**

A CBO cost analysis has not yet been completed for this bill.

## **Administration Position**

The Administration position is unknown at this time.

## **Anticipated Amendments**

Representative LaMalfa will offer an amendment making a variety of changes to the bill. The amendment: 1) makes technical corrections; 2) clarifies the streamlining provisions 3) clarifies that extraordinary circumstances procedures apply to the categorical exclusion created in section 2; 4) clarifies the permissible uses of permit fees; and 5) clarifies the Secretary's authority with regard to the allocation of any use remaining after adjusting permit use allocations.

## **Effect on Current Law (Ramseyer)**

### **Showing Current Law as Amended by H.R. 289**

[new text highlighted in yellow; text to be deleted in brackets and highlighted in blue]

Section 803 of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802)

## **§6802. Recreation fee authority**

### **(a) Authority of Secretary**

Beginning in fiscal year 2005 and thereafter, the Secretary may establish, modify, charge, and collect recreation fees at Federal recreational lands and waters as provided for in this section.

### **(b) Basis for recreation fees**

Recreation fees shall be established in a manner consistent with the following criteria:

- (1) The amount of the recreation fee shall be commensurate with the benefits and services provided to the visitor.
- (2) The Secretary shall consider the aggregate effect of recreation fees on recreation users and recreation service providers.
- (3) The Secretary shall consider comparable fees charged elsewhere and by other public agencies and by nearby private sector operators.
- (4) The Secretary shall consider the public policy or management objectives served by the recreation fee.
- (5) The Secretary shall obtain input from the appropriate Recreation Resource Advisory Committee, as provided in [section 6803\(d\) of this title](#).
- (6) The Secretary shall consider such other factors or criteria as determined appropriate by the Secretary.

### **(c) Special considerations**

The Secretary shall establish the minimum number of recreation fees and shall avoid the collection of multiple or layered recreation fees for similar uses, activities, or programs.

### **(d) Limitations on recreation fees**

#### **(1) Prohibition on fees for certain activities or services**

The Secretary shall not charge any standard amenity recreation fee or expanded amenity recreation fee for Federal recreational lands and waters administered by the Bureau of Land Management, the Forest Service, or the Bureau of Reclamation under this chapter for any of the following:

(A) Solely for parking, undesignated parking, or picnicking along roads or trailsides.

(B) For general access unless specifically authorized under this section.

(C) For dispersed areas with low or no investment unless specifically authorized under this section.

(D) For persons who are driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using the facilities and services.

(E) For camping at undeveloped sites that do not provide a minimum number of facilities and services as described in subsection (g)(2)(A).

(F) For use of overlooks or scenic pullouts.

(G) For travel by private, noncommercial vehicle over any national parkway or any road or highway established as a part of the Federal-aid System, as defined in [section 101 of title 23](#),<sup>1</sup> which is commonly used by the public as a means of travel between two places either or both of which are outside any unit or area at which recreation fees are charged under this chapter.

(H) For travel by private, noncommercial vehicle, boat, or aircraft over any road or highway, waterway, or airway to any land in which such person has any property right if such land is within any unit or area at which recreation fees are charged under this chapter.

(I) For any person who has a right of access for hunting or fishing privileges under a specific provision of law or treaty.

(J) For any person who is engaged in the conduct of official Federal, State, Tribal, or local government business.

(K) For special attention or extra services necessary to meet the needs of the disabled.

## **(2) Relation to fees for use of highways or roads**

An entity that pays a special recreation permit fee or similar permit fee shall not be subject to a road cost-sharing fee or a fee for the use of highways or roads that are open to private, noncommercial use within the boundaries of any Federal recreational lands or waters, as authorized under [section 537 of this title](#).

## **(3) Prohibition on fees for certain persons or places**

The Secretary shall not charge an entrance fee or standard amenity recreation fee for the following:

(A) Any person under 16 years of age.

(B) Outings conducted for noncommercial educational purposes by schools or bona fide academic institutions.

(C) The U.S.S. Arizona Memorial, Independence National Historical Park, any unit of the National Park System within the District of Columbia, or Arlington House-Robert E. Lee National Memorial.

(D) The Flight 93 National Memorial.

(E) Entrance on other routes into the Great Smoky Mountains National Park or any part thereof unless fees are charged for entrance into that park on main highways and thoroughfares.

(F) Entrance on units of the National Park System containing deed restrictions on charging fees.

(G) An area or unit covered under section 203 of the Alaska National Interest Lands Conservation Act (Public Law 96–487; [16 U.S.C. 410hh–2](#)), with the exception of Denali National Park and Preserve.

(H) A unit of the National Wildlife Refuge System created, expanded, or modified by the Alaska National Interest Lands Conservation Act (Public Law 96–487).

(I) Any person who visits a unit or area under the jurisdiction of the United States Fish and Wildlife Service and who has been issued a valid migratory bird hunting and conservation stamp issued under [section 718b of this title](#).

(J) Any person engaged in a nonrecreational activity authorized under a valid permit issued under any other Act, including a valid grazing permit.

#### **(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.

#### **(e) Entrance fee**

##### **(1) Authorized sites for entrance fees**

The Secretary of the Interior may charge an entrance fee for a unit of the National Park System, including a national monument administered by the National Park Service, or for a unit of the National Wildlife Refuge System.

##### **(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.

#### **(f) Standard amenity recreation fee**

Except as limited by subsection (d), the Secretary may charge a standard amenity recreation fee for Federal recreational lands and waters under the jurisdiction of the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service, but only at the following:

- (1) A National Conservation Area.
- (2) A National Volcanic Monument.
- (3) A destination visitor or interpretive center that provides a broad range of interpretive services, programs, and media.
- (4) An area-
  - (A) that provides significant opportunities for outdoor recreation;
  - (B) that has substantial Federal investments;
  - (C) where fees can be efficiently collected; and
  - (D) that contains all of the following amenities:
    - (i) Designated developed parking.
    - (ii) A permanent toilet facility.
    - (iii) A permanent trash receptacle.

- (iv) Interpretive sign, exhibit, or kiosk.
- (v) Picnic tables.
- (vi) Security services.

**(g) Expanded amenity recreation fee**

**(1) NPS and USFWS authority**

Except as limited by subsection (d), the Secretary of the Interior may charge an expanded amenity recreation fee, either in addition to an entrance fee or by itself, at Federal recreational lands and waters under the jurisdiction of the National Park Service or the United States Fish and Wildlife Service when the Secretary of the Interior determines that the visitor uses a specific or specialized facility, equipment, or service.

**(2) Other Federal land management agencies**

Except as limited by subsection (d), the Secretary may charge an expanded amenity recreation fee, either in addition to a standard amenity fee or by itself, at Federal recreational lands and waters under the jurisdiction of the Forest Service, the Bureau of Land Management, or the Bureau of Reclamation, but only for the following facilities or services:

(A) Use of developed campgrounds that provide at least a majority of the following:

- (i) Tent or trailer spaces.
- (ii) Picnic tables.
- (iii) Drinking water.
- (iv) Access roads.
- (v) The collection of the fee by an employee or agent of the Federal land management agency.
- (vi) Reasonable visitor protection.
- (vii) Refuse containers.
- (viii) Toilet facilities.
- (ix) Simple devices for containing a campfire.

(B) Use of highly developed boat launches with specialized facilities or services such as mechanical or hydraulic boat lifts or facilities, multi-lane paved ramps, paved parking, restrooms and other improvements such as boarding floats, loading ramps, or fish cleaning stations.

(C) Rental of cabins, boats, stock animals, lookouts, historic structures, group day-use or overnight sites, audio tour devices, portable sanitation devices, binoculars or other equipment.

(D) Use of hookups for electricity, cable, or sewer.

(E) Use of sanitary dump stations.

(F) Participation in an enhanced interpretive program or special tour.

(G) Use of reservation services.

(H) Use of transportation services.

(I) Use of areas where emergency medical or first-aid services are administered from facilities staffed by public employees or employees under a contract or reciprocal agreement with the Federal Government.

(J) Use of developed swimming sites that provide at least a majority of the following:

- (i) Bathhouse with showers and flush toilets.
- (ii) Refuse containers.
- (iii) Picnic areas.
- (iv) Paved parking.
- (v) Attendants, including lifeguards.
- (vi) Floats encompassing the swimming area.
- (vii) Swimming deck.

#### **[(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.]

#### **(h) Special Recreation Permit and Fee-**

(1) IN GENERAL- The Secretary may--

(A) issue a special recreation permit for Federal recreational lands and waters; and

(B) charge a special recreation permit fee in connection with the issuance of the permit.

(2) SPECIAL RECREATION PERMITS- The Secretary may issue special recreation permits in the following circumstances:

(A) For specialized individual and group use of Federal facilities and Federal recreational lands and waters, such as, but not limited to, use of special areas or areas where use is allocated, motorized recreational vehicle use, and group activities or events.

(B) To recreation service providers who conduct outfitting, guiding, and other recreation services on Federal recreational lands and waters managed by the Forest Service, Bureau of Land Management, Bureau of Reclamation, or the United States Fish and Wildlife Service.

(C) To recreation service providers who conduct recreation or competitive events, which may involve incidental sales on Federal recreational lands and waters managed by the Forest Service, Bureau of Land Management, Bureau of Reclamation, or the United States Fish and Wildlife Service.

(3) REDUCTION IN FEDERAL COSTS- To reduce Federal costs in administering this subsection, the issuance of a new special recreation permit for activities under paragraph (2) that have been considered under



previous analysis or that are similar to existing uses or are not inconsistent with approved uses shall qualify for categorical exclusions under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).