

CRS Report for Congress

Federal Lands Recreation Enhancement Act

Updated March 9, 2007

Carol Hardy Vincent
Specialist in Natural Resources Policy
Resources, Science, and Industry Division



Prepared for Members and
Committees of Congress

Federal Lands Recreation Enhancement Act

Summary

The Federal Lands Recreation Enhancement Act (REA in P.L. 108-447) established a new recreation fee program for five federal agencies — the Bureau of Reclamation (Reclamation), National Park Service (NPS), Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM) in the Department of the Interior (DOI) and the Forest Service (FS) in the Department of Agriculture (USDA). The law authorizes these agencies to charge fees at recreation sites through December 8, 2014. It provides for different kinds of fees, criteria for charging fees, public participation in determining fees, and the establishment of a national recreation pass. The agencies can use the collections without further appropriation. Most of the money is for improvements at the collecting site, such as operation, maintenance, and capital improvement projects.

This program supersedes, and seeks to improve upon, the Recreational Fee Demonstration Program. Recreation fees have been controversial for decades, and there continues to be a difference of opinion as to the need for recreation fees and how fee programs should operate.

The agencies are in transition to the new recreation fee program. The Recreation Fee Leadership Council, comprised of senior DOI and USDA policy officials, is overseeing agency implementation of the new fee program through an implementation plan with short-, medium-, and long-term goals. Some of these have been accomplished, while others are ongoing. The Fee Council also established working groups on key provisions of the new law, related to fee collections and expenditures, communications, Recreation Resource Advisory Committees (Recreation RACs) and public participation, and passes. The BLM and FS have decided to collaborate in the use of RACs, which will make recommendations on fee sites and fees. Some of the existing RACs have begun meeting to consider fee issues. With regard to passes, a new national recreation pass became available in January 2007.

The agencies have issued policy guidance on implementing REA, including through an Implementation Handbook (June 2006) with interagency guidance on aspects of REA. Further, the agencies have conducted analyses of the extent to which sites charging fees under the former Fee Demo Program meet the criteria and prohibitions of the REA for charging entry, standard amenity, and expanded amenity fees. The NPS and FWS made little change in fees and fee sites as a result of the new law. The BLM made some adjustments, while the FS made the most changes, dropping fees at 437 sites. Reclamation has decided to implement the fee program in one or a few areas.

Congress is overseeing agency implementation efforts. Hearings in the 109th Congress focused on the development of the new national recreation pass as well as on implementation generally. In May 2006, the agencies submitted to Congress the First Triennial Report on the recreation fee program. The Government Accountability Office released a report in September 2006 on program implementation, with recommendations for program improvement.

Contents

Introduction and Background	1
Fees	2
Types of Fees	2
Criteria for Establishing Fees	3
Retention, Use, and Enforcement of Fees	4
Public Participation and Collaboration	4
Recreation Passes	5
Support and Opposition	6
Implementation	6
Policy Guidance	7
Working Groups	8
Recreation RACs	8
National Pass	9
Fee Sites	9
Use of Recreation Fee Revenues	10
Legislative Action	12

Federal Lands Recreation Enhancement Act

Introduction and Background

The 108th Congress established a new recreation fee program for the Bureau of Reclamation (Reclamation) and the four major federal land management agencies — the National Park Service (NPS), Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM) in the Department of the Interior (DOI), and the Forest Service (FS) in the Department of Agriculture (USDA). The Federal Lands Recreation Enhancement Act (REA)¹ authorizes the agencies to charge and collect fees at federal recreational lands and waters. The act authorizes different kinds of fees, outlines criteria for establishing fees, and prohibits charging fees for certain activities or services. The agencies can spend the revenue collected without further appropriation, with most of the money retained at the collection site, and the collections can be used for specified purposes. The act also authorizes an interagency pass that can be used at federal recreation sites throughout the nation, as well as regional multi-entity passes. The program is to terminate 10 years after enactment — on December 8, 2014. Currently, DOI and USDA agencies are in transition to the new fee authority, and Congress is overseeing implementation activities.

This new recreation fee program supersedes an earlier one, the Recreational Fee Demonstration Program (“Fee Demo”), which began in 1996 as a three-year trial but was extended several times. That program had allowed the four land management agencies, but not Reclamation, to test the feasibility of charging fees to generate revenues for improvements at recreation sites. While the number of fee sites was limited initially, the agencies ultimately were allowed to establish any number of fee sites, set fee levels, and retain and spend the revenue collected without further appropriation. At least 80% of the revenue had to be retained and used at the site where it was generated, and agencies had wide latitude to spend the funds on purposes specified in law.

The extent to which fees should be charged for recreation has been controversial for decades, and the Fee Demo program had both supporters and critics. It was supported by the Administration and others in part for generating revenue; providing flexibility in setting fees and using revenues; having the direct beneficiaries of recreation pay more for benefits; deterring criminal activity, such as littering and vandalism; and ameliorating damage where it did occur. However, the Fee Demo program was criticized as doubly taxing the recreating public; resulting in unfair and confusing fees in some areas; promoting commercial development that damaged federal lands; and discriminating against lower-income people, rural residents, and

¹ The Federal Lands Recreation Enhancement Act was enacted on December 8, 2004, as Title VIII of Division J of P.L. 108-447, the Consolidated Appropriations Act for FY2005.

low-impact recreation. Still other criticisms pertained to program implementation, including the high cost of fee collection and a lack of consistency in implementation within and across agencies.

Recent Congresses considered whether to let the Fee Demo program expire, extend it, or make it permanent, and how to structure any extended or permanent program. Central to the debate was which agencies or types of lands to include in a fee program, and how to determine fee amounts, collect fees, and spend collections. In enacting the REA, Congress created a 10-year program, and extended it to Reclamation. Congress sought to eliminate some of the concerns with Fee Demo, in part by simplifying and standardizing the types of fees, authorizing an interagency recreation pass, and providing for public input in establishing fee locations and amounts.

The new recreation fee program is expected to continue to provide incentives for agency managers to charge and use fees for onsite improvements. Prior to Fee Demo, the agencies had little incentive to develop, monitor, and evaluate fee collection since most fees went to the General Fund of the Treasury;² the agencies could not retain them for resource improvements or management activities. REA monies, like Fee Demo collections, are intended to supplement appropriations. In general, recreation fees have represented a small portion of each agency's overall financing, with the bulk of agency monies coming from appropriated funds.³ The agencies (excluding Reclamation) anticipated collecting about \$240 million in fees in FY2007, with NPS collections accounting for about two-thirds of the total.

Fees

In enacting the REA, Congress sought to reduce or eliminate duplication, inconsistency, and confusion over determining and collecting fees. The law seeks to standardize the types of recreation fees across agencies, differentiate among different types of fees, and minimize the situations where multiple fees can be charged. To alleviate concerns that past fees had been charged for non-developed areas, the law outlines areas and circumstances where fees can and cannot be charged, in some cases specifying the level of services needed to charge a fee.

Types of Fees. The REA provides guidance on establishing entrance, standard amenity, expanded amenity, and special recreation permit fees. An entrance fee may be charged for units managed by the NPS and FWS only, on the grounds that recreation fees at these agencies have enjoyed widespread support and the lands typically have certain kinds of infrastructure and services. The law explicitly states that the BLM, Reclamation, and FS may not charge entrance fees. Rather, these

² In 1964, Congress had authorized the four land management agencies to collect recreation fees through the Land and Water Conservation Fund (LWCF) Act. For more information on LWCF, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Current Issues*, by Carol Hardy Vincent.

³ For more information on appropriations for the federal land management agencies, see CRS Report RL33399, *Interior, Environment, and Related Agencies: FY2007 Appropriations*, coordinated by Carol Hardy Vincent.

agencies may charge “standard amenity fees” in areas or circumstances where a certain level of services or facilities is available. Specifically, these agencies may charge standard amenity fees at:

- a National Conservation Area;
- a National Volcanic Monument;
- a destination visitor or interpretive center that provides a broad range of interpretive services, programs, and media;
- an area that provides significant opportunities for outdoor recreation, has substantial federal investments, where fees can be collected efficiently, and that contains all of the following amenities:
 - designated developed parking,
 - permanent toilet facility,
 - permanent trash receptacle,
 - interpretive sign, exhibit, or kiosk,
 - picnic tables, and
 - security services.⁴

All five agencies also may charge an “expanded amenity fee,” on the grounds that some extra fee for specialized services is fair and equitable. The NPS and FWS may charge such a fee when a visitor uses a specific or specialized facility, equipment, or service. The fee may be in addition to an entrance fee or may be the sole fee. The BLM, Reclamation, and FS may charge an expanded amenity fee only for specified facilities and services, such as use of developed campgrounds or developed swimming sites that provide at least a majority of services identified in the law; use of transportation services; rental of cabins, boats, and historic structures; and participation in special tours.

The REA prohibits the BLM, Reclamation, and FS from charging standard or expanded amenity fees for certain activities and services, such as for parking or picnicking along roads or trailsides, accessing dispersed areas with low or no investment (unless specifically authorized in the law), passing through areas without using facilities and services, and using scenic overlooks. In addition, the law specifies places where entrance and standard fees may not be charged — for example, at NPS units within the District of Columbia. It also bars fees from being charged to certain persons, such as those under 16 years old, or for certain purposes, including outings for noncommercial educational purposes by schools and academic institutions.

Further, the DOI and USDA Secretaries may charge a special recreation permit fee in connection with a special permit issued for specialized recreation at lands and waters of any of the five agencies. Specialized recreation includes group activities, recreation events, and use of motorized recreational vehicles.

Criteria for Establishing Fees. To promote fair and consistent fees among agencies and locations, the REA provides criteria for establishing recreation fees. For instance, they are to be commensurate with the benefits and services provided,

⁴ P.L. 108-447, Division J, Title VIII, §3(f).

and the Secretaries are to consider comparable fees charged elsewhere, such as by nearby private providers of recreation services. To minimize confusion, burden, and overlap of fees, the Secretaries are to consider the aggregate effect of recreation fees on recreation users and providers. They are to establish the minimum number of fees and avoid collecting multiple or layered fees for similar purposes. In establishing new fees and fee sites, the Secretaries are to obtain input from Recreation Resource Advisory Committees (Recreation RACs; see below).

Retention, Use, and Enforcement of Fees. The law allows each agency to retain and spend the revenue collected without further appropriation. Each agency's collections are to be deposited into a special account in the Treasury. In general, at least 80% of the revenue collected is to be retained and used at the site where it was generated. However, the Secretaries of DOI and USDA can reduce that amount to not less than 60% for a fiscal year, if collections exceed reasonable needs. This provision seeks to provide agencies with flexibility in using their revenues, in part to address high-priority needs at areas that do not collect enough revenue. The remaining collections are to be used agency-wide, at the discretion of the agency. However, the law contains other provisions for the distribution of certain collections, including from the sale of the national recreation pass and regional multi-entity passes.

The agencies have broad discretion in using revenues for purposes specified in the REA, which aim to benefit visitors directly. They include facility maintenance, repair, and enhancement; interpretation and visitor services; signs; certain habitat restoration; law enforcement; operation of the recreation fee program; and fee management agreements. The Secretaries may not use collections for employee bonuses or biological monitoring under the Endangered Species Act. Further, the Secretaries may not use more than "an average" of 15% of collections for program administration, overhead, and indirect costs. Under the Fee Demo program, agencies reported that a majority of fees were spent on deferred maintenance and various visitor services.

The REA continues a requirement that the Secretaries enforce the payment of fees. It authorizes penalties for nonpayment, with the fine for the first offense capped at \$100.

Public Participation and Collaboration

The Secretaries must provide an opportunity for public participation in establishing fees under the REA. For instance, they are to publish a notice in the *Federal Register* regarding a new fee area six months before its establishment. In addition, for each BLM and FS state or region, the Secretaries are to appoint Recreation RACs to make recommendations regarding standard and expanded amenity fees in accordance with specified procedures. The Secretary may establish as many RACs in a state or region as necessary. If rejecting a fee recommendation, the Secretary is to notify the House Resources and Senate Energy and Natural Resources Committees of the reasons at least 30 days before implementing a decision.

Each Recreation RAC is to be composed of 11 members and broadly representative of the recreation community, as specified in the law. Each RAC is to include five people who represent various types of recreation users, such as summer nonmotorized recreation; three people who represent different types of interest groups, such as motorized outfitters and guides; a state tourism official to represent the state; a representative of affected Indian tribes; and a representative of local governments. The Secretaries may appoint members from nominations by governors and designated county officials, but are not to establish RACs if there is insufficient interest to ensure a balance of views. Also, in lieu of creating Recreation RACs, the Secretaries may use RACs established under other authorities (e.g., the RACs established under the grazing regulations.)

The Secretaries are to post notices of fees in areas where fees are being charged, as well as in publications distributed in the area. To the extent practicable, the Secretaries also are to post notices in areas where work is being performed using collections. Communication on how fees are spent is thought to enhance public acceptance of fees.

The law provides for collaboration with other federal and nonfederal entities, with a goal of greater convenience to the public and improved efficiency for the agencies. It authorizes the Secretaries to enter into contracts for various purposes, such as fee collection and processing services and emergency medical services. States or subdivisions of states that enter into such agreements may share in the revenues collected.

Recreation Passes

The law authorizes the establishment of a national pass for recreation at a variety of sites managed by different agencies. One goal is to facilitate recreation by consolidating existing passes and reducing confusion over which passes can be accepted where. Another is to increase the convenience of visiting adjacent sites managed by different agencies. Specifically, the National Parks and Federal Recreational Lands Pass is to cover the entrance fee and standard amenity fee at all areas where such fees are charged.⁵ The Secretaries are to establish the price of the pass, which generally is to be valid for one year. However, they are to provide free or reduced-cost passes to certain individuals, such as volunteers and senior or disabled visitors, and may provide for a discounted or free day for visitors generally. They are to issue guidelines on administering the pass, including on sharing costs and revenues among the agencies. Further, the Secretaries may enter into cooperative agreements with governmental and nongovernmental entities for developing and implementing the pass program.

The law also provides authority to develop site-specific and regional multi-entity passes. A site-specific pass is to cover the entrance or standard amenity fee for a particular site for up to a year. A regional multi-entity pass is to be accepted by one or more of the five agencies or one or more governmental or nongovernmental entities. In establishing multi-entity passes, the Secretary is to enter into an

⁵ This pass sometimes has been referred as the “America the Beautiful Pass.”

agreement with all participating agencies or entities as to the price of the pass and the sharing of costs and revenues, among other issues.

Support and Opposition

Many assert that the new recreation fee program will improve recreation and visitor services, and is needed to supplement appropriations. They believe that the new program retains the benefits of the former Fee Demo program, such as keeping most fees on-site to provide improvements desired by visitors. They also contend that the new program improves upon the former one, for example, by seeking to establish fair and similar fees among agencies. The criteria in the REA for determining fees are intended to ensure that they are charged in appropriate circumstances, namely, where infrastructure and services directly benefit the public. Among other improvements, fee supporters note that the new program provides for more public involvement in determining fee sites and setting fees (e.g., through RACs) and for increased coordination with local communities (e.g., through fee management agreements). They also view the establishment of a single national pass as increasing consistency, convenience, and clarity.

However, some concerns with recreation fees continue to be expressed. They include concerns that the new program does not go far enough in simplifying fees, that it does not allow for fee experimentation to adapt to change, and that it fails to ensure that most collections will be used for maintenance backlogs of agencies, which many regard as a priority. Other concerns are that federal lands will be overdeveloped to attract fee-paying tourists, and that one national pass will be difficult to implement given differences in agency lands and complex issues regarding pricing and sharing revenues. Some charge that the authority to reduce the funds a site retains to 60% could make planning difficult, reduce incentives to collect fees, and weaken visitor support for fees. Other critics continue to oppose recreation fees in general, arguing, among other things, that appropriations should cover the costs of operating and maintaining federal lands or that they might be reduced because fees are available. Some counties and states (e.g., Montana and Colorado) have passed resolutions opposing recreation fees and seeking to repeal the REA.

Implementation

DOI and USDA are in transition to the new fee program.⁶ The Recreation Fee Leadership Council is overseeing agency implementation of the new fee program. This interagency group, comprised of senior DOI and USDA department and agency

⁶ Much of the information in this section on implementing the REA is derived from two documents: U.S. Dept. of the Interior and U.S. Dept. of Agriculture, *Federal Lands Recreation Enhancement Act: First Triennial Report to Congress, Fiscal Year 2006*, (Washington, DC: May 2006), 82 pp., available on the DOI website at [<http://www.doi.gov/initiatives/final.pdf>], and hereafter cited as the First Triennial Report; and U.S. Government Accountability Office, *Recreation Fees: Agencies Can Better Implement the Federal Lands Recreation Enhancement Act and Account for Fee Revenues*, GAO-06-1016 (Washington, DC: September 2006), 111 pp., available on the GAO website at [<http://www.gao.gov/new.items/d061016.pdf>], and hereafter cited as the September 2006 GAO Report.

officials, was established in 2002 to enhance coordination and consistency of fees under Fee Demo. Current responsibilities include ensuring national consistency of fees; developing fee policies, such as those concerning passes and collections; and evaluating the program.

On December 17, 2004, the Fee Council adopted a draft implementation plan with short-, medium-, and long-term goals. Short-term goals, generally undertaken within three months of enactment, include creating the special accounts in the Treasury, conducting a rough analysis of whether sites that currently charge fees meet the criteria in the REA, and making preliminary assessments as to whether existing RACs could serve the role provided for in the REA. These particular short-term actions have been completed.

Medium-term goals were generally to be accomplished within approximately 6-12 months of enactment. They include conducting a more detailed analysis of whether existing fee sites meet the requirements in the REA, which has been completed. Another medium-term goal is establishing interagency guidance in various areas, for example, regarding the criteria for charging fees. Comprehensive interagency guidelines have not been completed, as discussed below. Another medium-term goal is developing procedures for gathering the data needed for periodic reports to Congress. Specifically, under the REA, not later than May 1, 2006, and every three years thereafter, the Secretaries are to submit to Congress a report on the recreation fee program. The report is to include an evaluation of the program and any recommendations for changes to the fee system. The First Triennial Report to Congress was issued in May 2006. The report provides information on many aspects of the transition to the REA program, including fee structure, policies, and sites; collection and use of recreation revenues; development of a national pass for recreation; and public participation in the development of recreation fees, including through the establishment of Recreation RACs. It does not contain recommendations for improvement because implementation of the program is not complete.

Long-term goals, targeted for completion in a year or more following enactment, include establishing Recreation RACs; bringing Reclamation into the fee program; and issuing the National Parks and Federal Recreational Lands Pass. The new national pass is available, while these other particular long-term goals are ongoing, as discussed below.

Policy Guidance

Interagency policy guidance on many aspects of REA is contained in a handbook issued in June 2006.⁷ The Implementation Handbook establishes common definitions of terms in the REA and overarching policy guidelines to implement the law. It does not contain information on passes, which is nearing completion and is expected to be added. In addition, DOI and the FS jointly issued guidelines for public involvement in establishing new fee areas and informing the public of how

⁷ U.S. Dept. of Agriculture and U.S. Dept. of the Interior, *Interagency Implementation Handbook for Federal Lands Recreation Enhancement Act* (Washington, DC: June 2006), 23 pages. Hereafter referred to as the Implementation Handbook.

recreation fee revenues are used.⁸ Further, some of the agencies have issued their own guidance on the intention and requirements of the new recreation fee program. The Fee Council expects such policies to be consistent across agencies.

Some agency officials have found the REA difficult to interpret and have suggested a need for more specific guidance on implementing and managing fee programs, according to the September 2006 GAO report. For instance, some officials noted a need for clarification of how to apply criteria and terminology in the REA and guidance on adding or modifying fee sites. The GAO recommended that the Interior and Agriculture Secretaries direct their agencies to promptly issue final REA regulations and implementation guidance on their fee programs.⁹

Working Groups

The Fee Council established a Steering Group, composed of senior staff from each of the agencies involved, to oversee implementation. Staff-level working groups also were established to address specific provisions of the new law, such as those related to fee collections and expenditures, communications, Recreation RACs and public participation, and passes.

The Fee Collection/Expenditure group focused on developing common definitions and guidance to help the agencies implement and report on REA consistently. The group also drafted the Implementation Handbook to clarify the statutory language of the REA and provide instructions for implementing the law. The work of this group is largely complete. The Communications group facilitates communication with Congress and the public.

Recreation RACs. The Recreation RACs/Public Participation work group focuses on establishing RACs or using existing ones in accordance with REA. The BLM and FS have decided to collaborate, by having both agencies use existing BLM Resource Advisory Councils in some areas, one existing FS Advisory Board, and five new FS-chartered Recreation RACs in other areas. These advisory bodies will make recommendations to both agencies on creating, altering, and eliminating recreation fees on both FS and BLM lands. Based on the recommendations of three state governors, there will be no RACs in Alaska, Nebraska, and Wyoming.¹⁰ Some of the existing BLM RACs have established processes for considering agency fee proposals, while others have begun meeting to review fee proposals. The FS is finalizing the selection of members for the new Recreation RACs. According to GAO, the slow pace of establishing RACs has delayed the implementation of new or increased fees at some BLM and FS units because agency policy generally requires RAC review and recommendation for new or increased fees. GAO recommended that the Secretaries

⁸ 70 *Fed. Reg.* 56622 (Sept. 28, 2005).

⁹ September 2006 GAO Report, pp. 29 and 63-64.

¹⁰ 71 *Fed. Reg.* 55416 (Sept. 22, 2006) and Joint Press Release, U.S. Dept. of Agriculture and U.S. Dept. of the Interior, *Public Advisory Committees to Provide Recommendations on Federal Recreation Fees* (Sept. 22, 2006).

expedite actions needed for the RACs to do their work to implement the REA.¹¹ The agencies also have held “listening sessions” throughout the country to get public input on the fee program.

National Pass. The Interagency Pass working group has focused on the development of the National Parks and Federal Recreational Lands Pass. A key issue was how much to charge for the pass, and the agencies contracted with a university for a pricing analysis. Another issue is how to track use of the pass, particularly at BLM and FS sites that may be remote and unstaffed. Still another issue is how to distribute revenues from the sale of the pass among the agencies over the long term. In the short term, revenues from pass sales at sites will remain with the agency that collects them. Revenues collected centrally, for instance through sales of passes on the Internet, will be used for administrative costs of the program and repaying the NPS for startup costs of the new pass, with additional revenue split among the five agencies. In the long term, the distribution of revenues from centralized sales will take into account use of the pass.

The standard version of the new annual pass became available to the general public in January 2007 for a cost of \$80. There are three other versions of the pass, for volunteers, seniors, and persons with disabilities. The standard annual pass is expected to be the most widely used. The volunteer pass is free to volunteers who work at recreation sites for 500 hours over any time period. Both the standard annual and volunteer passes are valid for a 12-month period, and cover entrance fees and standard amenity fees. The senior pass is a lifetime pass for those aged 62 or older, for a \$10 fee. The access pass is a free, lifetime pass for persons with permanent disabilities. Both the senior and access passes cover entrance fees and standard amenity fees, and discounts on some expanded amenity fees. Existing passes will be valid until they expire.¹²

Fee Sites

The agencies conducted a detailed analysis of the extent to which sites charging recreation fees under the former Fee Demo Program met the criteria and prohibitions of the REA for charging entry, standard amenity, and expanded amenity fees. The agencies instructed units to make changes where necessary. The NPS and FWS made little change, as both agencies were authorized under Fee Demo to charge entrance fees and continue to have authority to charge entrance fees under REA. Most BLM areas were in compliance with the new requirements and continue to charge fees as before, although some adjustments were made. For instance, some sites added amenities, such as picnic tables, to be in compliance with REA provisions. The FS made the most changes as a result of the REA. The agency dropped fees at 437 sites, including numerous trailheads and picnic areas, because they did not have the amenities required by the REA. Under REA, a majority of sites are not charging a recreation fee — over 90% of BLM and FS, over 80% of FWS (sites open to visitors), and 48% of NPS.

¹¹ September 2006 GAO Report, pp. 14-15 and 63.

¹² Information on, and purchase of, these recreation passes is available on the website of the U.S. Geological Survey at [<http://store.usgs.gov/pass/>].

Some BLM and FS sites that are charging standard amenity fees do not have all the required amenities, according to GAO.¹³ Specifically, 2 BLM sites and 36 FS sites reported that they did not have all the amenities; most commonly missing were permanent trash receptacles or interpretive signs, exhibits, or kiosks. However, BLM and FS state- and department-level officials expressed a belief that all fee areas were in compliance, and that information to the contrary from unit staff likely was due to a misunderstanding.

FS use of high-impact recreation area (HIRA) designations for charging fees has been controversial. While the REA does not mention HIRAs, the agencies have agreed to define an HIRA as an area of concentrated recreational use that includes a variety of developed sites providing a similar recreation opportunity. Further, it is a contiguous area composed of places, activities, or special, natural, or cultural features that is the focal point of recreation and that has clear access points and boundaries.¹⁴ The FS views it as more convenient for users to pay fees for use of these areas rather than to pay separate fees at each of their sites. The agency notes that collections are used for upkeep of facilities in the areas. Some of the HIRAs have been criticized by recreationists as broad designations for large tracts of land lacking in the amenities required by the REA.

The REA applies to Reclamation, and the agency has determined that one or a few sites will be part of the fee program. Few Reclamation recreation sites meet the criteria for charging fees established in the REA. About 250 of Reclamation's 300 recreation sites are managed by partner organizations, and the agency concluded that these non-federally managed sites will not participate in the REA program. Reclamation determined that 7 of the approximately 50 sites it manages directly would qualify to charge standard amenity fees under the REA. As part of its review of whether and to what extent to participate in the REA, Reclamation examined whether the costs of implementing and participating in the program would exceed expected revenues under the program. The agency also assessed its authority to charge recreation fees under another authority that was not repealed by the REA — the Federal Water Project Recreation Act.¹⁵ Before Reclamation's decision to participate in the REA, the GAO had recommended that the Secretary of the Interior direct Reclamation to expedite a decision on implementing the REA.¹⁶

Use of Recreation Fee Revenues

The agencies have used recreation fees for a variety of operation, maintenance, and capital improvement projects. The NPS, FWS, and FS have projected how they will spend their recreation fee revenues during the five-year period from FY2006 to

¹³ September 2006 GAO Report, p. 26.

¹⁴ Implementation Handbook, p. 6.

¹⁵ 16 U.S.C. §§460l-12 et seq.

¹⁶ September 2006 GAO Report, p. 7 and p. 63.

FY2010.¹⁷ Priorities for the three agencies include maintenance and visitor services. The BLM and Reclamation did not similarly have five-year projections.¹⁸

The NPS expects to take in and spend the most recreation revenue, dedicating the largest share of its funds to reducing the agency's backlog of deferred maintenance. Specifically, the NPS expects to spend a total of \$1.08 billion over five years (from FY2006 to FY2010), with \$480.0 million (44%) on deferred maintenance, \$183.2 million (17%) on direct costs/costs of collection, \$175.0 million (16%) on visitor services, \$116.8 million (11%) on non-deferred maintenance, and \$126.6 million (12%) on other purposes.

The FS projects spending \$249.9 million from FY2006 to FY2010. Maintenance, deferred and non-deferred combined, is expected to be the biggest expenditure — \$96.0 million (38%). The agency anticipates spending \$66.0 million (26%) on visitor services, \$42.5 million (17%) on direct costs/costs of collection, and \$45.4 million (18%) on other purposes.

The FWS anticipates spending \$24.6 million over five years. The largest share, \$10.4 million (42%), would be used for visitor services. Other projected spending includes \$3.7 million (15%) for non-deferred maintenance, \$3.4 million (14%) for direct costs/costs of collection, \$2.1 million (8%) for administrative overhead and indirect costs, \$2.0 million (8%) for law enforcement, and \$3.1 million (12%) on other purposes.

The agencies have different procedures for selecting projects to be funded with REA revenues. For BLM, FWS, and FS, most projects are approved at the local units, usually within a few weeks of being suggested by unit staff. NPS projects are reviewed by NPS local units, regions, and headquarters, before submission for DOI or congressional approval. This process can take a year or more. While it may help ensure consistency with the REA and accountability in use of funds, it also may delay the implementation of projects and contribute to balances of unobligated revenues.¹⁹

Unobligated balances of collected fees have varied between 58% and 80% from FY1997 to FY2005. During this period, annual obligations increased from about 20% of total funds available in FY1997 to almost 40% in FY2005. Specifically, as of the end of FY2005, the agencies (excluding Reclamation) had a combined unobligated balance of recreation fees totaling \$295.8 million. This constituted 61% of the \$483.8 million available for obligation. These revenues accumulated under the former Fee Demo program as well as the current program under REA. Typically, not all the fees collected during a year are spent during that year. Reasons include a need to carry over funds for the next year's operations and for large projects; insufficient

¹⁷ First Triennial Report, in particular p. 18 (NPS), p. 25 (FWS), and p. 34 (FS).

¹⁸ A five year table for the NPS covering FY2007-FY2011 shows similar priorities. The table is contained in the National Park Service budget justification for FY2008, available on DOI's website at [<http://www.doi.gov/budget/>], pp. RecFee-6-7.

¹⁹ September 2006 GAO Report, p. 8.

staff at some units to administer and implement projects; and the time needed for environmental analysis, design, and engineering.²⁰

The average cost to the agencies of collecting recreation fees declined from 20.8% of gross fees in FY2002 to 18.7% in FY2005. The cost to each agency varied during FY2005. Specifically, the cost to the BLM was 9.6%; to the FWS, 14%, to the FS, 15.6%, and to the NPS, 20.5%. Smaller park units have tended to have higher collection costs, because they collect relatively little revenue or more complex site logistics (e.g. staffed entrance fee stations).²¹

Legislative Action

Legislation has been introduced in the 110th Congress (H.R. 652 and S. 617) to make the National Parks and Federal Recreational Lands Pass available to veterans for a cost of \$10 annually. The 110th Congress also is continuing to oversee agency efforts to establish, collect, and spend recreation fees under the REA.

The 109th Congress held hearings to oversee the recreation fee program. For example, on February 17, 2005, a Senate Energy and Natural Resources subcommittee held a hearing on NPS implementation of the recreation fee program, with a focus on the development of the National Parks and Federal Recreational Lands Pass. A DOI official addressed the structure and time frames for implementing the program, and the transition to a new national recreation pass. Other witnesses explored the marketing and management of the National Park Passport Program (which the new pass has since replaced), and issues and concerns related to the development of a new national pass.

On October 26, 2005, another Senate Energy and Natural Resources subcommittee held a hearing on implementation of the recreation fee program generally. DOI and USDA officials provided an overview of implementation activities, including the assessment of recreation sites for compliance with provisions of the REA, development of a framework for establishing Recreation RACs, creation of HIRAs for areas with a high concentration of recreation sites that collectively meet the definition for a standard amenity fee, and use of recreation fees. Some witnesses expressed concern with aspects of implementation, such as the increase in use of special recreation permits, creation of HIRAs where amenities appear to be lacking, and slow pace of establishing Recreation RACs and of implementing the recreation fee program overall.

The September 2006 GAO Report on REA implementation had concluded that the agencies were making progress, while some issues were unresolved. Specific conclusions included that two of the working groups — on Recreation RACs/Public Participation and on the Interagency Pass — had not finished their work, and that the Secretaries of Agriculture and the Interior should expedite actions to get the Recreation RACs operational. Also, some DOI and FS units were unclear as to how to implement the REA, and final regulations and detailed policy and procedure guidance are needed for effective and consistent program implementation, according

²⁰ September 2006 GAO Report p. 53-56 and First Triennial Report p. 59.

²¹ First Triennial Report, p. 58-59.

to GAO. GAO further concluded that some agencies lacked adequate controls and accounting procedures over collected recreation fees, and recommended that the agencies implement internal controls over their fee revenues. Finally, GAO asserted that Reclamation should expedite its decision on whether and how it will implement the REA.²² The agency has since determined that one or a few sites will be part of the REA.

²² September 2006 GAO Report, p. 61-64.