FLREA Draft Bill

H.R. __, Federal Lands Recreation Enhancement Modernization Act

STATEMENT OF

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U.S. DEPARTMENT OF THE INTERIOR

BEFORE THE

SUBCOMMITTEE ON FEDERAL LANDS

HOUSE NATURAL RESOURCES COMMITTEE

ON

H.R. , THE FEDERAL LANDS RECREATION ENHANCEMENT MODERNIZATION ACT

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Chairman McClintock, Ranking Member Tsongas and Members of the Subcommittee, thank you for inviting the Department of the Interior to appear before you today to present the Department's views on a discussion draft bill, H.R. , the Federal Lands Recreation Enhancement Modernization Act, that would amend the Federal Lands Recreation Enhancement Act (FLREA) and the recreation fee program, authorize a pilot cabin rental program on National Forest System lands, and reform certain concession policies.

We appreciate that Congress has extended FLREA until September 30, 2017. Enacted in 2004, FLREA has been highly successful in leveraging recreation fees to implement thousands of projects that directly benefit visitors as authorized by this law. It has enhanced the visits of the over 500 million Americans and travelers from around the world who visit our national parks, national forests, wildlife refuges and public lands. These projects support public safety, maintain

recreation sites, provide eye-opening educational experiences, build informational exhibits, fund interpretive programs, and offer a range of recreational and cultural opportunities for visitors.

This statement reflects our initial review of the discussion draft. We appreciate the provisions of the discussion draft that address issues and concerns that have been identified by the Administration and by stakeholders regarding implementation of FLREA, and we support the general goal of reauthorizing FLREA. However, as discussed in more detail below, the Department has a number of concerns regarding provisions of this draft, and would not support the bill if introduced in its current form. The Department may provide additional views on this legislation after the bill is introduced and after conducting further analysis. We look forward to working with the Committee on this important matter.

H.R. __ Federal Lands Recreation Modernization Act

A very general description of the current version of the draft bill is followed by the Department's views on the draft.

Title I of the draft amends FLREA in a number of ways. Significantly, it would revise the terminology and conditions under which the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), the National Park Service (NPS), the Bureau of Reclamation (Reclamation) and the U.S. Forest Service (USFS) collect fees (identified as day use, entrance, recreation, and special recreation permit fees). It would also modify the processes for establishing fees, ensuring public and local government participation, and would provide that Congress must approve any new or increased fees. It would provide for additional categories and types of the America the Beautiful—National Parks and Federal Recreational Lands Pass, including Armed Forces and youth passes, and it would provide for some limitations for use and purchase of the pass. The draft also amends the fee expenditure provisions of FLREA to direct the use of fees for certain purposes and limit the use of fees for others, including placing caps on the amount of fee revenue that may be used to administer the program and adjusting the percentage of fees that remain at the site collected. The Secretaries would be required to develop and maintain cost accounting systems to track, manage, and report fee receipts and expenditures at each unit. Finally, in addition to a number of technical and conforming amendments, the draft

provides that the authority of the Secretaries under this program will sunset on December 31, 2022.

Title II of the discussion draft authorizes the USFS to conduct a pilot cabin rental program on National Forest Service lands.

Title III of the draft provides certain reforms of federal land management agency concession policies. In particular, Title III provides express concession authority for the BLM, and a pilot concessionaire campground permit program on National Forest System lands. The draft calls for the Secretaries to require, to the extent practicable, concessionaires operating federally owned campgrounds and facilities to accept recreation passes, and provides a process for reimbursement of these concessionaires. The draft would require the Secretaries to consider and evaluate concessionaire management as an option for any new visitor facilities, and would authorize a concessionaire operating a facility or providing services under a recreation concession and recreation lease agreement on federal lands to expand the operating season beyond the season prescribed in the agreement. Finally, Title III authorizes the USFS to convert federally owned improvements at up to 20 developed recreation sites in the National Forest System to private ownership and operation, with consideration equal to not less than the appraised fair market value of the improvements.

Title I

We have previously testified, and continue to believe, that there are several core elements of the recreation fee program authorized by FLREA that have contributed to the success of the program, and that each of these core elements should be contained in any reauthorization of FLREA. First is the ability for agencies to retain fees and to reinvest fee dollars where they are collected, without further appropriation. This element is at the heart of the program, and the resulting amenities at sites nationwide have ensured, and continue to ensure, visitor support for the program. Visitor satisfaction surveys conducted by BLM, FWS, NPS, and USFS have found that the vast majority of visitors (about 90% of respondents) are satisfied with the level of amenities and services provided at FLREA sites and believe that the recreation fees they pay are reasonable.

A second core element is the creation of an interagency program. By providing a single recreation fee authority for the agencies, FLREA has enhanced customer service, efficiency, and consistency in fee collection and expenditure, improving the visitor experience. It has resulted in establishment of national fee policies, such as fee-free days, and the creation of the successful Recreation.gov reservation service. The recreation program has improved coordination among agencies which benefits the visiting public - making recreation sites more accessible and information easier to find. Furthermore, while ensuring coordination, FLREA acknowledges and allows for differences among the agencies. This is important because the agencies have different missions, and are unique in the services they provide to the public and in the services the public expects from the agencies.

The administrative ability to establish recreation fees for a range of activities, including flexibility to charge for unique services or amenities and new emerging amenities that benefit visitors, is a third core element. In setting any fees, the agencies seek the public's input, and there are protections in the FLREA program to ensure there are no disadvantages to the local communities. Each agency has developed policies consistent with FLREA, to ensure that the public receives notification about agency proposals and has an opportunity to provide input as agencies consider new recreation fees and changes to existing recreation fees.

A final core element of the successful fee program is long-term authority. Knowing that a program is not likely to change every few years provides certainty to visitors, and enables the agencies to efficiently implement the program and to manage multi-year projects that improve visitor safety, experience and opportunities. Long term authority also allows for the development of key partnerships with outfitters, other vendors, and communities that rely on the economic benefits of visitation and investments made by the agencies.

While the draft bill under review today addresses many of these core elements and contains several provisions that we believe would be helpful, we have a number of concerns with the legislation, as drafted, and would not support this version of the bill. Among other things, it does not provide long-term authority for the program, nor does it provide administrative flexibility for the implementing agencies.

With respect to a long-term authority, the draft bill includes a sunset date - December 31, 2022 - for the Secretaries' authority to carry out the recreation fee program. The Administration believes that Congress should permanently authorize this program, rather than provide what may be less than a 7 year authorization. The Administration understands that oversight of the program is important, and the participating agencies have consistently submitted reports of their activities to Congress. However, permanent authorization would not preclude Congress from ongoing oversight of the program.

With respect to administrative flexibility, a number of provisions in the discussion draft would limit the ability of the agencies to effectively implement the recreation fee program.

For example, the draft provides that new fees must be approved by an Act of Congress. This provision will negatively impact the management of the fee program and impact the recreation services that have been supported since FLREA was enacted. It is impractical to require that Congress pass a law each year to approve a myriad of small fee increases - many as little as $5 or less - at hundreds of sites for boat launches, tours and other amenities. The agencies currently obtain input from Congressional delegations, local Federal, State, and County officials, commercial tour operators, and the general public through both local discussions and via notices posted in the Federal Register when establishing or increasing fees. In addition to being impractical, this requirement could add significant time to the process and will likely discourage the addition of new services and amenities for visitors. Consequently, this requirement would have a chilling effect on the services and amenities that agencies would be able to provide visitors. The Administration strongly opposes this requirement.

Another example of the way the discussion draft would limit administrative flexibility involves the change to requiring that 90 percent of the fees collected at a site, rather than 80 percent, remain at that site. Retention of fees at the site where it is collected has been a very positive part of the pass program, and the draft bill continues this practice. However, the Department believes that increasing the percent of fees retained to 90 percent from the current 80 percent unnecessarily limits the agencies' ability to use funds to provide enhancements at sites that do not

collect fees, or to use those funds to support agency-wide initiatives, such as the recreation.gov reservation service.

The discussion draft additionally limits the use of fees for overhead and administrative costs, but also appears to add significant new overhead and administrative costs for the agencies, including in revised sections 803(f)(4) (requiring agencies to publish a list of all sites for which day use fees are collected); 803(h)(5) (duplication of existing regulations); 803(h)(7) (process for establishment of a stewardship program); 803(i) (posting notice of fees); 803(j) (use of new technology); 803(k) (submission of plans for reduction of traffic delays); 804(b) and (c) (public participation process); 805(a)(10)(pass use study); 809(a) -(d)(cost accounting systems, extensive annual reporting, and audits). Currently, each agency has developed procedures and tools to ensure accountability in administration of the recreation fee program and to share the objective of fair and transparent revenue collection, controlling the cost of collection while maintaining consistently high levels of service, and avoiding accumulation of unobligated revenues. The NPS, for example, currently spends less than 5% on overhead. However, the significant increase in administrative requirements contained in the draft would likely result in increased overhead costs for the NPS. If these costs are capped at 5%, either fees would have to increase or services would have to be reduced to accommodate these additional costs. Consequently, the Administration does not support these provisions.

Other provisions in the discussion draft amending FLREA also raise concern for the Department. In particular, in the section of the discussion draft related to special recreation permits, the bill re-defines "major federal action," a central tenet of the National Environmental Policy Act (NEPA), for recreation service providers who conduct outfitting, guiding, and other recreation services on Federal lands managed by the USFS, BLM, Reclamation, and the FWS. In these circumstances, we believe that such an amendment to NEPA is unnecessary. A Determination of NEPA Adequacy or a categorical exclusion often achieves the same reduction of cost and time without the consequent undermining of this important agency disclosure and public participation law.

Finally, we would encourage the inclusion of language in the draft bill setting the price for the Senior Pass at the same level as the annual pass. The current language in FLREA sets the price at $10 for a lifetime pass for citizens 62 years of age or older. Raising the price of a Senior Pass to the same as the current annual pass will continue to give seniors lifetime access to parks and public lands nationwide, and, even at $80, it will still be an good value. The additional funds raised from Senior Pass sales will be invested directly in tangible improvements to the visitor experience. The National Park Service Centennial Act, an Administration legislative proposal introduced by Representative Grijalva as H.R. 3556, includes a provision to raise the price of the Senior Pass in such a manner.

The Department appreciates the Committee's interest in and support of the recreation fee program, and would like to work with the Committee to address these issues in the discussion draft and to provide other clarifying and technical amendments.

Titles II and III

For Titles II and III, we note that our concessions programs are separate from the recreation fee programs and have their own set of complexities in how they operate within the Department's bureaus. For this reason, we recommend that some of the concession and related provisions in Titles II and III of the draft be considered separately from the recreation fee program.

Regardless, with respect to the specific provisions of Title II of the discussion draft, the Department defers to the USFS for a substantive position on Title II as well as Sections 303 and 307 of Title III. These provisions address concession and related issues only on USFS-managed lands.

The remainder of Title III of the discussion draft includes provisions addressing concession issues on Federal lands managed by the Department.

The Department is supportive of the express authority in Section 301 to provide concession facilities and services to visitors on BLM-managed lands. BLM currently manages its visitor facilities and services under a number of separate and disparate authorities; a comprehensive

provision could help provide BLM with clear authority to issue recreation concession permits to provide facilities and services to visitors of the public lands. We would like to work with the Committee on technical issues related to this provision.

The Department does have significant concerns regarding the remaining sections in Title III of the draft, which impact concession operations managed by NPS, FWS, BOR and BLM. The Department believes that these provisions as drafted are either unnecessary or would be detrimental to the operations of visitor services.

Section 302 of the discussion draft mandates that the Secretaries must require that concessionaires operating federally-owned campgrounds and day use facilities accept recreational passes, and the Secretaries must reimburse the concessionaires for accepting the pass. The requirement for reimbursement is impractical and would be difficult to manage. Furthermore, both NPS and FWS currently authorize concession operations under agency specific laws. In the case of the national parks, NPS already considers the financial impact of the acceptance of recreation fees in establishing its franchise fee, which would amount to double compensation to these concessioners.

Section 304 of the draft provides a preference for maintaining concessionaire-run recreation facilities as concessionaire-run. This provision significantly limits the discretion of the agency to manage visitor services on federal lands, and appears to create a right for an incumbent concessionaire to continue operations regardless of whether the agency finds the operations to be necessary and appropriate. We believe that agencies should continue to have the flexibility to determine the most appropriate type of operation for a facility, and to determine if the facility should no longer operate. Section 305 provides an unnecessary process for the agencies' consideration of visitor facilities, which is duplicative of processes that the agencies currently utilize to engage the public, including commercial services plans (NPS), and resource management plans (BLM).

Finally, Section 306 provides a concessionaire operating on federal land the authority to unilaterally extend its operating season, regardless of existing laws and contracts. This unilateral authority also does not appear to take into consideration resource protection or visitor safety

issues, as it does not consider the many factors that go into establishing concession operating season dates, including the condition of infrastructure, the opening and closing dates of other agency facilities and services, the availability of protection rangers, structural fire fighters, and maintenance staff, especially utility system operators, many of whom are seasonal employees hired for specific time periods. Finally, in a time of constrained budgets, it does not consider that agencies may not have funds available to extend their seasons. We do not support these provisions as drafted in Title III.

Again, we appreciate the work that is being undertaken to reauthorize FLREA. The Department supports the recreation fee program and has found that FLREA facilitates efficiency, consistency, and good customer service by enabling interagency cooperation and public participation. We look forward to continuing to work with the Committee on reauthorization and ensuring that the agencies will be able to effectively and efficiently manage the breadth of activities that occur on the lands we manage, as well as providing for the diverse current and future recreational needs of the public.

Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions you or other members of the Subcommittee may have.