

Attorneys General of California, Arizona, District of Columbia, Maine, Maryland, Massachusetts, New Mexico, New York, Oregon, Rhode Island, and Washington

November 22, 2017

Via Overnight Mail

Michael T. Reynolds
Acting Director
National Park Service
Recreation Fee Program
1849 C Street, NW
Mail Stop: 2346
Washington, DC 20240

RE: Comments on the National Park Service's Proposed Targeted Fee Increases at Parks to Address Maintenance Backlog

Dear Mr. Reynolds:

We, the undersigned Attorneys General of California, Arizona, District of Columbia, Maine, Maryland, Massachusetts, New Mexico, New York, Oregon, Rhode Island, and Washington, submit the attached comments in opposition to the proposal by the National Park Service (the "Service") to significantly increase the fees that many Americans will be charged to access the most popular national parks in our country.

As John Muir once put it in *The Yosemite*, "everybody needs beauty as well as bread, places to play in and pray in, where nature may heal and give strength to body and soul alike." The Service's proposed fee increases, which double or even triple existing entrance fees, threaten to put many Americans to the choice of beauty or bread and to distance them from the places in which so many experience the natural wonder of our great and unique nation. This is concerning as a matter of policy. We cannot let the most popular and awe-inspiring national parks become places only for the wealthy. As Americans, we are all public landowners. All Americans should have access to these lands, especially communities that the Service's surveys show have often been underrepresented, including inner city children and Hispanic-American and African-American populations.

As a legal matter, the Service has not offered a reasoned explanation for its proposed fee increases and its actions are inconsistent with the laws that govern our national park system. The Service's purported rationale for the proposed fee increase is to provide funding for the park system's \$11.3 billion deferred maintenance backlog. However, this proposal may well exacerbate the shortfall by lowering visitation rates and revenues for the parks. Even taking the Service's revenue projection at face value, it is negated several times over by the proposed

\$296.6 million reduction in the Service's budget for fiscal year 2018.¹ While we acknowledge and appreciate the ongoing, critical funding needs faced by the Service, addressing these needs should not come at the expense of making national parks less accessible to many Americans or affecting communities that rely on these parks as important economic engines. Given the size of the deferred maintenance backlog, the most prudent step for the Administration to take would be to seek additional funding from Congress.²

Unlike prior fee increases or changes established by the Service, the current proposal fails to include any analysis or evidence that the Service has considered or met the criteria set forth by Congress in Section 6802(b) of the Federal Lands Recreation Enhancement Act of 2004 ("FLREA"), 16 U.S.C. § 6802(b). The proposal provides no economic analysis to support its conclusions that revenues will increase by the amount projected or that the maintenance backlog will be reduced. Nor is the effect of the fee increase on recreation users and recreation service providers considered. For example, two of the Service's own surveys have found that cost—including travel, lodging and entrance fees—is a major reason for the underrepresentation of minority communities among park visitors, but the impact of a doubling or tripling of entrance fees on those communities is not addressed in the proposal. Further, the Service has not provided any data regarding comparable fees charged elsewhere and by other public agencies and nearby private sector operators, as it is required to do. And, the proposal fails to consider the public policy or management objectives served by the recreation fee. In short, the Service has failed to adhere to the criteria set forth by Congress.

Moreover, fee increases by the Service have been relatively infrequent and, when undertaken, have typically been implemented with detailed analysis and robust public outreach, including individualized press releases and social media posts from specific parks, as well as public meetings in affected areas and multiple opportunities to provide public comment. By contrast, this proposed increase has not had sufficient outreach or opportunity for public comment.

For these reasons, which we discuss in more detail in the enclosed formal comments, we urge the Service to scrap the proposed fee increases and instead seek adequate funding from Congress and support current bipartisan legislative proposals, such as the National Park Service Legacy Act, that would provide increased revenue for national parks without increasing park

¹ U.S. Department of the Interior, FY2018 Interior Budget in Brief, National Park Service, *available at*: https://www.doi.gov/sites/doi.gov/files/uploads/fy2018_bib_bh069.pdf.

² The Administration has also failed to offer support for current bipartisan legislative proposals that increase funding for national parks without raising park fees. In particular, H.R. 2584, sponsored by Rep. Will Hurd (R-Tex.), and S. 751, sponsored by Senator Mark Warner (D-Va), known as the "National Park Service Legacy Act," would establish the National Park Service Legacy Restoration Fund and require specified amounts of federal mineral revenues to be used for meeting high-priority deferred maintenance needs of the Service.

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fees. We would welcome the opportunity to collaborate in any such effort to support our parks and ensure that they remain accessible for all Americans.

Sincerely,



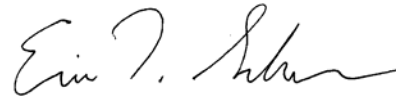
Xavier Becerra
California Attorney General



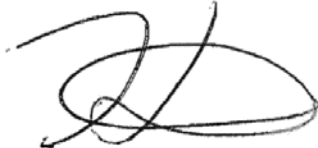
Hector Balderas
New Mexico Attorney General



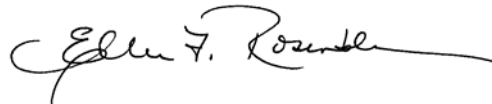
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Arizona Attorney General



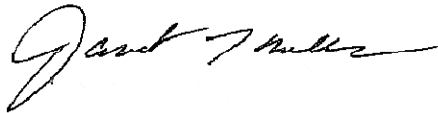
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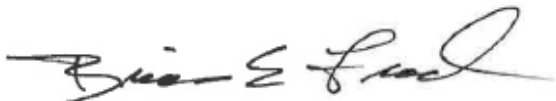
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Comments by the Attorneys General of California, Arizona, District of Columbia, Maine, Maryland, Massachusetts, New Mexico, New York, Oregon, Rhode Island, and Washington on the National Park Service's Proposed Targeted Fee Increases at Parks to Address Maintenance Backlog

I. The Proposed Fee Increases Are Unlikely to Address the Deferred Maintenance Backlog Within the National Park System.

On October 24, 2017, the National Park Service announced a proposal to dramatically increase entrance fees at 17 highly visited national parks during five-month peak visitor seasons. The proposed increases, which would double or even triple certain entrance fees, would take affect at Arches, Bryce Canyon, Canyonlands, Denali, Glacier, Grand Canyon, Grand Teton, Olympic, Sequoia & Kings Canyon, Yellowstone, Yosemite, and Zion National Parks on May 1, 2018. New peak season rates would go into effect at Acadia, Mount Rainier, Rocky Mountain, and Shenandoah National Parks on June 1, 2018, while Joshua Tree National Park would see its new fees in place “as soon as practicable in 2018.”

For example, under the proposal, the current per vehicle fee during the peak season (which allows park access for 7 days) would increase from \$30 to \$70 at Glacier, Grand Teton, Grand Canyon, Yellowstone, and Yosemite National Parks, and from \$25 to \$70 at Acadia, Olympic, Shenandoah, and Joshua Tree National Parks. The same fee for motorcycles would increase from \$12-25 to \$50, while the per-person fee (for entry on foot or bicycle) would double or triple from \$10-15 to \$30. An annual pass for each specific park would increase from \$35-60 to \$75.

The Service's proposal fails to provide any reasoned explanation for this dramatic change and is unlikely to achieve the stated purpose of addressing the deferred maintenance backlog within the national park system. As noted above, the current deferred maintenance backlog is estimated to be approximately \$11.3 billion.³ In its proposal, the Service states that “[i]mplementing the seasonal pricing structure will likely increase total entrance fee revenues from \$199.9M to \$268.5M, annually,” *i.e.*, an increase of \$68.6 million in annual revenue.⁴ Even if the deferred maintenance backlog did not increase over time, it would take decades to actually address this serious issue using additional revenue from this proposal.

³ See National Park Service, Deferred Maintenance Reports, *available at*: <https://www.nps.gov/subjects/plandesignconstruct/defermain.htm>.

⁴ See National Park Service, “Targeted Feed Increases at Parks to Address Maintenance Backlog; Fact Sheet,” *available at*:

<https://parkplanning.nps.gov/document.cfm?parkID=442&projectID=75576&documentID=83652>.

In addition, the Service has provided no economic analysis to show how the revenue generated from the fee increases will address the backlog, nor any analysis to show that the increases will not have the unintended consequence of deterring national park visitation or causing visitors to purchase other options which could lower the predicted revenues. As discussed below, the Service has failed to consider any evidence regarding whether visitation at the affected parks will continue at current levels under the new fee structure, especially given the agency's own survey data which shows that combined fees for entry, camping, and other services are a barrier for many potential national park visitors.

Moreover, the Service has failed to consider whether the proposed \$70 entrance fees for vehicles will shift more visitors into purchasing the \$80 "America the Beautiful – The National Parks and Federal Recreational Lands Pass" that allows admission to all national parks and over 2,000 federal recreation sites for an entire year. *See* 16 U.S.C. § 6804(a).⁵ Given that some of the "America the Beautiful" pass revenues may be shared among several federal agencies, visitors switching from paying a single entrance fee to purchasing an annual pass could actually result in less revenue for the National Park Service.⁶

II. The National Park Service Has Failed to Consider the Criteria Set Forth by Congress to Justify the Proposed Fee Increases.

Unlike prior fee increases or changes established by the Service, the current proposal fails to include any analysis or evidence that the National Park Service has considered or met the criteria set forth by Congress in Section 6802(b) of FLREA, 16 U.S.C. § 6802(b). The Service only has the authority granted to it by Congress, and here it has ignored the conditions Congress placed on its authority to raise entry fees. FLREA authorizes the agency to "establish, modify, charge, and collect recreation fees at Federal recreational lands and waters," *id.* § 6802(a), sets criteria for establishing and changing recreation fees, *id.* §§ 6801, 6802(b), and requires public notice and participation in the development or changing of such fees, *id.* § 6803.

Section 6802(b) of FLREA provides that "[r]ecreation fees shall be established in a manner consistent with the following criteria":

⁵ As established by Congress, U.S. citizens or those living in the U.S. who are 62 years of age or older can obtain a discounted pass for \$20 annually or a lifetime pass equal to that year's pass price, which is currently set at \$80. *Id.* § 6804(b).

⁶ *See* U.S. Department of the Interior, America the Beautiful – The National Parks and Federal Recreational Lands Pass, Interagency Standard Operating Procedures 2017 (Oct. 26, 2016), at 6 ("Revenue from field pass sales remains within the agency. Proceeds from Central Sales are shared among the six agencies after program expenses are paid."). The "America the Beautiful" pass is available for purchase online from the U.S. Geological Survey at: <https://store.usgs.gov/pass>.

- (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.

16 U.S.C. § 6802(b). The Service's implementation of these requirements is further described in its 2006 Management Policies,⁷ and Director's Order #22: Recreation Fees.⁸

Here, the Service has provided no economic analysis or other evidence to show that doubling or tripling the proposed entrance fees will be "commensurate with the benefits and services provided to the visitor." *See* 16 U.S.C. § 6802(b)(1). Such a finding is questionable here if the result of the proposed fee increases is to lower visitation rates or shift visitors into purchasing the "American the Beautiful" pass online in advance of a park visit, which would shift revenue away from the Service.

Further, the Service has failed to "consider the aggregate effect of recreation fees on recreation users and recreation service providers." *See* 16 U.S.C. § 6802(b)(2). This is especially true for African-American and Hispanic-American communities that are already underrepresented among park visitors and have previously cited the cost of hotels, food, and entrance fees as reasons for not visiting. In 2000 and again in 2008-2009, the Service conducted surveys of the public and published reports on racial and ethnic diversity among park visitors and non-visitors.⁹ Both surveys produced similar results showing

⁷ National Park Service, Management Policies 2006, *available at*: <https://www.nps.gov/policy/MP2006.pdf>.

⁸ National Park Service, Director's Order #22: Recreation Fees (May 14, 2010), *available at*: https://www.nps.gov/policy/DOrders/DO_22.pdf.

⁹ *See* Solop, Frederic I., *et al.*, *Ethnic and Racial Diversity of National Park System Visitors and Non-Visitors Technical Report* (Dec. 2003) (hereafter "NPS 2000 Survey"), *available at*: <http://npshistory.com/publications/social-science/comprehensive-survey/ethnic-racial-diversity.pdf>; Taylor, Patricia A., *et al.*, *National Park Service Comprehensive Survey of the American Public 2008-2009: Racial and Ethnic Diversity of National Park System Visitors and Non-Visitors* (July 2011) (hereafter "NPS 2008-09 Survey"), *available at*: https://www.nature.nps.gov/socialscience/docs/CompSurvey2008_2009RaceEthnicity.pdf. *See also* Blotkamp, Ariel, *et al.*, *Yosemite National Park Visitor Study, Summer 2009* (Apr. 2010),

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pronounced underrepresentation among these communities. Given that the surveys were conducted at the time when entrance fees at national parks were far lower than the proposed fees, higher entrance fees would likely become an increasingly cited reason for not visiting under the Service's proposal. We are very concerned about the Service's failure to consider how the fee increases might exacerbate this already significant problem.

In addition, the Service has provided no data regarding "comparable fees charged elsewhere and by other public agencies and by nearby private sector operators." *See* 16 U.S.C. § 6802(b)(3). Given that entrance fees do not even exist at many state and national parks, and the Service's proposal would double or even triple current fees for these most visited parks, it should be obvious that the proposal is out of line with comparable fees charged elsewhere. The proposal is also arbitrary when considering that the Service would now be charging a \$70 fee for a 7-day visit to a one specific national park, compared to an \$80 fee for the "American the Beautiful" pass that allows admission to all national parks and over 2,000 federal recreation sites for an entire calendar year. The proposal is also inconsistent with the \$20 annual pass that Congress determined was appropriate for U.S. citizens or residents who are 62 years of age or older. *See* 16 U.S.C. § 6804(b).

Finally, the Service has failed to "consider the public policy or management objectives served by the recreation fee." *See* 16 U.S.C. § 6802(b)(4). In particular, to the extent that these entrance fees will deter visitation, the proposal appears to conflict with the mission of the National Park Service to manage the park system for the enjoyment and "to the common benefit of all the people of the United States" and "future generations." 54 U.S.C. § 100101(a), (b)(2); *see Schieler v. United States*, 642 F. Supp. 1310, 1312 (E.D. Cal. 1986) (discussing National Park Service mandate "to promote and regulate the parks in such a manner that the scenery and natural and wild life in the parks are preserved unimpaired so that they may be enjoyed presently and in the future"). The proposal is also inconsistent with the National Park Service's own management objectives, which provide that while entrance fees "may provide for the support of the overall management and operation of parks ... they are not intended to offset the operational costs associated with a park."¹⁰

III. The National Park Service's Process Fails to Provide Adequate Opportunity for Local Outreach or Public Comment.

Fee increases by the Service have been relatively infrequent and, when undertaken, have typically been implemented with detailed analysis and robust public outreach. For example, in 2014 and 2015, following a self-imposed moratorium on increases put into place in 2008, the

(...continued)

available at: <https://www.nps.gov/yose/learn/nature/upload/Visitor-Use-Summer-2009-Study.pdf>.

¹⁰ National Park Service, Management Policies 2006, Section 8.2.6.

Service undertook a nationwide effort to standardize fees in similar parks across the country and included modest increases in entrance fees. As a result of that engagement, the per vehicle entrance fee for Yosemite National Park was increased from \$20 to \$25 (and \$30 for the peak months), while the per person fee increased from \$12 to \$15 and the motorcycle fee went from \$20 to \$25. Similarly, the per vehicle entrance fee for Sequoia & Kings Canyon National Parks was increased from \$20 to \$30 in 2015, while the per person fee increased from \$10 to \$15 and the motorcycle fee was raised from \$10 to \$25.

Unlike the current proposal's choice of 17 national parks, this prior increase provided park units with discretion about whether to follow the agency's proposed fees schedule based on public input and park-specific visitation considerations. The National Park Service encouraged individual park units to conduct their own public outreach to assess public reaction to fee increases, and such outreach included individualized press releases and social media posts from specific parks, webinars, as well as public meetings in affected areas and multiple opportunities to provide public comment.

By contrast, the Service is taking a Washington-based approach by announcing the proposed fee increases with a single press release from the Interior Department's Washington, DC headquarters, and offering a 60-day comment period that runs over a holiday season during which many Americans will be traveling and spending time with their families. The Service has failed to provide for the civic engagement with the public and stakeholders required by the Service's own policies. In particular, Director's Order #22, Section 10.3 requires that "[p]ark managers who consider establishing or changing a fee that results in increased financial impact to the visitor must engage the public and seek input from Congressional delegations, appropriate Federal, State and local officials, the local Chamber of Commerce, commercial tour operators, and the general public and other stakeholders before a new or changed fee is proposed" to the Service's Washington Office. Other than a press release and notice on the agency's own planning website, the Service has followed none of the procedures listed above.

CONCLUSION

For these reasons, we urge the National Park Service to scrap the proposed fee increases and begin anew in reviewing the ways to ensure adequate funding to address the deferred maintenance backlog at our national parks without increasing barriers to access.