



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

SEP - 6 2019

IN REPLY REFER TO:

Mr. Thomas H. Armstrong
General Counsel
Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Armstrong:

This letter of transmittal responds to your office's request of May 2, 2019, to the Department of the Interior (Department) relating to the use of Federal Lands Recreation Enhancement Act (FLREA) funds to collect trash and clean restrooms at National Parks during the December 2018-January 2019 government shutdown. As you will note, this document demonstrates not only that the activities of the Department were fully compliant with existing law, but also with long-standing practice regarding the use of such fees dating back to at least 2014.

The Report issued by the Government Accountability Office (GAO) hangs its conclusion upon the statement that "Under the facts and legal framework at issue here, it is clear that only the ONPS appropriation, and not the appropriation of the FLREA fees, is available for the day-to-day operational tasks at issue. Longstanding NPS practice established under both FLREA and its predecessor program only buttresses this conclusion." As the Department's response makes clear, the longstanding practice of NPS is the exact opposite: in fact, FLREA funds have been used for custodial services on dozens of occasions, spanning years.

I must also express the Department's profound disappointment that GAO did not await our reply before issuing its report, which we initially learned of through inquiries from the press. As the GAO knew, through multiple conversations with career attorneys at the Department, Interior was working on a response that would have addressed many of the questions raised in your report. Instead, GAO chose to issue its report without consideration of the legal analysis of career attorneys expert in this area, and mischaracterized the Department's actions as a "lack of cooperation" despite GAO's awareness that a response was in process. Even more disturbing is that GAO should have been aware, through multiple conversations with career Department officials, that the delay in response was due in part to competing requests for information from GAO regarding separate matters.

GAO's unwillingness to work with the Department in order to have a fulsome discussion of this important topic strikes at the very heart of comity between the Executive and Legislative Branches. Given the important role the GAO plays in analyzing complex questions of law and practice, it is to be assumed it would seek every available source of information and relevant professional analysis. Unfortunately, in this case, that did not happen.

Enclosed please find the materials that the Department of the Interior prepared in response to your request. As you will note, the Department wholly disagrees with the conclusions GAO reached prior to receiving Interior's input. We respectfully request that you include the Department's views in any subsequent communications or distributions related to this topic.

Please feel free to contact me if the Department may provide any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Zerzan', with a long, sweeping horizontal line extending to the right.

Gregory Zerzan
Deputy Solicitor for General Law

Enclosure