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Charging Public Land Users for Recreational Uses

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Citation Information

Dennerlein, Chip, "Charging Public Land Users for Recreational Uses" (1995). *Challenging Federal Ownership and Management: Public Lands and Public Benefits (October 11-13)*.
<https://scholar.law.colorado.edu/challenging-federal-ownership-management/14>

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Chip Dennerlein, *Charging Public Land Users for Recreational Uses, in CHALLENGING FEDERAL OWNERSHIP AND MANAGEMENT: PUBLIC LANDS AND PUBLIC BENEFITS* (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1995).

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CHARGING PUBLIC LAND USERS
FOR RECREATIONAL USES

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CHALLENGING FEDERAL OWNERSHIP AND MANAGEMENT:
PUBLIC LANDS AND PUBLIC BENEFITS

October 11-13, 1995

Natural Resources Law Center
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seen from a railroad car traveling across the wheated, if not fruited, plain. And then I was struck by Rocky Mountain National Park. Here was more than access. Here was landscape. And it was just the beginning.

Over the past twenty five years (all spent west of the Mississippi and most in Alaska) I have become a lover of America's public lands, and especially our National Parks. I love the character of the places and what they say about the character of a people who chose to hold them in common trust. It matters little whether our history over the past century shows that our first national forests were set aside in urgent presidential response to our own rapacious cut-and-run timber practices, or that establishment of our first national parks hinged largely on congress' need to salve a national inferiority complex with monuments grander than the cathedrals of Europe. Noble acts are always proud achievements - maybe more so when they come as bold responses to bad behavior or silly thinking. The history we are making today is what matters now. In the next century, our American culture will be judged less for the reasons we set aside our national forests, parks and refuges, than for the reasons we ultimately chose as the higher value, their ownership by all Americans, or by some.

Only a nation confident in its future would have dedicated itself so vigorously to both economic development and the preservation of its most outstanding lands and resources. Only a society of old world immigrants and new world individualists could blend such fierce personal identity with the powerful vision of a larger American community, and produce a Bill of Rights and a National Park Organic Act. We live in a country where all of us together can not take from a single individual the humblest piece of private property without just compensation. And where the grandest property on earth belongs to us all in common. To be sure, we did not arrive here without some bumps in the road. There was Civil War and sweat shops to name just a few. Branches of my family served time in both. There are bumps in the road today and bumps ahead. But somehow we emerged and still remain a place with best private and public opportunities on the planet. It is a paradox and a miracle, and I am fascinated by the first and awed by the second.

In looking back, I have begun to realize how well my family understood this. Though none would have ever written these words, each knew the worth of the individual and the value of the community. We were taught to stand up for our rights - and for what was right - even when unpopular or outnumbered. And we were taught to share even when we wanted - and could have gotten - an extra helping. We were taught not to ask the government for things we didn't really need. I may be one of the few members of my college class who never filed for unemployment at a time when sequential unemployment was an art form. Our wealth was (and still is) found in family and friends, but our lives were richer for the things our nation provided which we could never have achieved ourselves. Our National Parks and public lands have been called America's crown jewels. They are something more. They are the crown jewels of a nation without royalty. If they are in trouble - and they most certainly are - it is because we are losing sight of their meaning and context in our lives.

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The focus of this conference is on federal land management, but the issues reflect questions about how Americans see themselves today, and our answers will illuminate what we are to become. Are we still the confident nation which set aside our public lands and the society which chose to hold them in common ownership? Or have we become a confused nation which, for the first time, sees its future as uncertain, a society which sees national lands as "federal" not "public", and a people who believe (or can be convinced) that repairing the trust is a poor investment, and we are better off distributing the assets? Even if the shares are smaller - or unequal - maybe we'll at least gain control of some. What has this to do with Charging Public Land Users for Recreational Uses? Everything.

II. The Principles Behind Recreational User Pay Programs

Concessions, fees, excise taxes, partnerships, and other forms of revenue generation or cost recovery are only tools, not tenets of public land management. They are practices, not principles. They are merely tools, and the task for which a tool is designed is the task it will ultimately be used to accomplish. If recreational user pay programs are to be tools which help fix existing management problems, and maintain natural resources and services on our federal lands over the long term, then we must first carefully consider and communicate the principles by which they will be fashioned and used. Equally important, if carefully developed, recreational user pay programs can help strengthen a sense of personal value in and individual responsibility toward our public lands on the part of large numbers of citizens. If, however, in our urgent need respond to the present funding crisis, we "skip all this B.S. and get down to business", then we will surely fashion tools which will dismantle public management, and continue to disconnect the broader American public from their national lands. This danger can be plainly seen in some of the "reform" bills now pending before the U.S. Congress.

It is said of business deals and diplomatic agreements, that when the chips are down what is really negotiated is meaning. I am not here today to negotiate the meaning behind increasing charges to recreational users, simply to offer observations from my own perspective. Most come from my involvement in the management of park systems - local, state and national. A few are based on my work with other public lands. I believe all have some practical application to the challenges at hand. I hope you will find them useful in gaining additional financial support and, in strengthening and sustaining peoples' personal connection to the public lands they own. That is my meaning. Now, we can get down to business.

III. Concessions

For economic and social reasons, and because of both short and long term implications, concessions reform should be the first element of any discussion about charging public land users for recreational uses.

First, like many Americans, my family believes "if it ain't broke, don't fix it". The National Park concessions system is broke. The current system is based on a 30-year old law (1965 Concessions Policy Act), designed to help establish businesses in what were then remote, high-risk locations. Much has changed in 30 years, and national parks are among the top tourist destinations in the United State and worldwide. In 1994, 268 million visitors entered the national parks. The reality is that in 1995, few locations can be found which provide less business risk to a concessioner.

Even in Alaska, which is always cited as - and in many ways is - an exception, the last decade has brought tremendous changes. Visitation has increased dramatically. At parks like Glacier Bay, Denali and Katmai, concessions are the subject of business acquisitions, corporate mergers, and maneuverings to secure local preferences in upcoming renewals. Moreover, a most important Alaska difference which is rarely mentioned is the fact that within the conservation system units established in 1980 (pursuant to the Alaska National Interest Lands Conservation Act - ANILCA), there are substantial lands owned by Alaska Native corporations, the state and other private owners. Many of these lands are strategically located. For business and policy reasons, these lands are the focus of current and future land-based developments. The more significant issues in Alaska, focuses on the provision of services rather than development of facilities, and there is keen interest in this area of commercial opportunity.

The truth is, whatever the particular situation, businesses across the United States are anxious to provide concession-related visitor services. These businesses compete with each other for contracts at museums, state parks, hospitals, universities, airports and military bases. Unfortunately, the 1965 Act now serves as a barrier to competition. This situation is costing the American taxpayer at least \$40 million per year, and estimates show that responsible concessions reform could generate up to \$60 million per year for the parks.

Second, like most true Americans, the only institution my family distrusts more than big government, is big business. In 1993, concessioners enjoyed gross revenues of \$657 million, but paid only an average of 2.9 percent back to the Treasury, much lower than the 10 to 15 percent average in state park systems. Last year, in my own state of Alaska, the largest concession in the state park system returned over 10 percent, while the largest national park concession - Denali National Park - returned three quarters of one percent. People understand that concessions are user fees. They know all about costs which are passed on to the consumer. But they can also see that the current figures are outrageous, and they understand that a non-competitive system will continue to favor monopolies and sweetheart deals. If we are going to raise fees for individual recreational users, we must start by making sure that the half-billion dollar industry doing business in our national parks competes for contracts and offers a reasonable rate of return to American taxpayers.

Third, failure to reform the current system has long term economic and social liabilities which dwarf even the significant issues of fair annual returns. Current law gives concessioners a possessory interest in concession structures. As concessioners depreciate

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facilities under the tax code, taxpayer liability for buying out possessory interests in concession structures grows with every year as the value of many of the structures appreciate. The U.S. government has already directly paid or written off over \$80 million to buy out just two concessioners with possessory interests (Yellowstone at \$19 million and Yosemite at \$61.5 million). The value of possessory interests held by concessioners is not even tracked by the government, but is likely to total \$500 million or more. Without reform of this provision, we are headed down a sure path where ever larger corporations will either bankrupt the park system or own it. Former Secretary of the Interior Manuel Lujan confronted the results of such a policy and its long term implications for American citizens when he took on the battle over the Yosemite concession.

It should be clear from the facts and figures above that the current system of national park concessions needs reform. But there is another reason why reform of the present system is so important. In our present and future operations, public land managers will need to rely more - not less - on concessions and other variations of contract management and partnering. In today's America, the public and policy makers like the idea of private service delivery over direct government programs for a variety of reasons. However, from surveys and my own experience in park management, I am equally convinced that most people do not want parks and public lands given over to commercial interests. Our task is to fashion a national concessions policy which reflects these public views.

Unfortunately, the jury is still out on our ability to achieve this objective. Last year nearly identical bi-partisan concession reform bills passed the House of Representatives and the Senate by overwhelming majorities of over 90 percent in each house, but the legislation was caught in political maneuvering at the end of the session and was never voted on for final passage. Earlier this year, Senator Robert Bennett (R-Utah) reintroduced the reform measures as S. 309. However, there have been a few changes in Congress. Both House Resources Committee and the Senate Committee on Energy and Natural Resources are now chaired by two of the few members who voted against concession reform - Congressman Don Young (R-AK) and Senator Frank Murkowski (R-AK) respectively. On August 10, 1995, Murkowski introduced "omnibus" park legislation (S.1144). Title I of the legislation counters the concessions reform measures in S. 309. Title I of S.1144 locks in the current anti-competitive system, and further requires that concessions monopolies be maintained in national parks, and established by statute in national forests, refuges, and BLM areas. The annual fiscal effects of such a policy can be seen in many areas and the long term financial implications have been witnessed at Yosemite, but the ultimate social costs will far exceed either of these. Whether U.S. concession policy will be redesigned to enhance the benefits which private businesses provide to public lands and users, or as a tool to transfer the benefits of public lands to private corporations is the question at hand. It is a question of meaning.

IV. Fees

Raising or establishing individual fees for general entrance to areas, for the use of special facilities, or as a requirement for participation in certain activities is the most obvious and widely used means of raising revenues on public lands, and most states and local governments are far ahead of federal agencies, or at least more aggressive, in their fee policies. When the National Park Service was established in 1916, the admission price to Yellowstone for a family of five arriving by car was \$7.50. Today the price is \$10.00. The Park Service's annual operating expenses are about \$900 million, while the Service takes in only about \$100 million in fee revenues, a percentage lower than any state system. Given this situation, suggesting fee increases seems like a "no-brainer". However, there are a number of questions which deserve consideration before the National Park Service, or any other land managers, rush out to print a new fee schedule.

In 1995, National Parks and Conservation Association (NPCA) collaborated with the College of Natural Resources, Colorado State University (CSU) in a national opinion survey to determine how the American public views the condition of the parks, threats to park resources, the importance of park protection and the future prospects for the National Park System. Questions regarding entrance fees were part of the CSU survey. After being informed that entrance fees for most major national parks are about \$5.00 per carload (as opposed to a per person fee) for a visit up to seven days, respondents were asked whether they felt this was too low, about right, or too high. Most (60%) felt that current fees were about right, 35.9% felt they were too low, and 4.1% indicated that fees were too high. Interestingly, however, a large majority (78.5%) were not opposed to an increase in entrance fees. People like the parks. And as other portions of the survey showed, they have a concern for the health of the parks today, and expect to see the parks protected for future generations. Thus, while people like the current low fees, they are willing to pay more - with one very big condition.

Respondents to the survey were presented with two strategies for allocating revenues generated from a modest increase in user fees. They were asked if they would support an increase if: 1) they knew that 100% of fee revenues would be used to maintain the parks and 2) if 50% of the fees would be used for the parks and 50% for other federal programs. Nearly 80% of the respondents supported the fee increase if 100% of the revenue went to the parks, but support plummeted to less than 18% if only half of the money went to parks. Americans like to get what they pay for and they don't like paying direct fees into some general government pot. Recreational users, from casual park visitors to active outdoor recreationalists are no exception.

A few years ago, the Appalachian Mountain Club (AMC) conducted a survey of its members to see whether hikers would pay to support their recreation. The survey was doubly interesting because the AMC is well recognized for the thousands of hours of personal time which its membership dedicates to improving and maintaining trails. These were people who were already making a direct contribution. More than 50% of the respondents said that hikers would pay. However, as with the NPCA/CSU survey, there

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were conditions. In follow up work, AMC leaders identified five criteria which would guide the club's participation in any discussions regarding recreational user fees on public lands.

1) Fee revenues must be unequivocally dedicated to public land and recreation purposes.

2) Fee revenues must not take the place of existing public funding.

3) Fee revenues should be used to fund management, as well as land acquisition.

4) Fee structures should not be regressive.

5) Fee systems should not tamper with a users feeling of freedom in the outdoors.

These are important guidelines to gain public support and to ensure that we accomplish the job we set out to do, but they are often difficult to achieve. In most cases, fees collected from national park visitors never get back to the parks. In Alaska's state park system, the percentage of fee revenues in the budget has gone up significantly over the past decade, but the overall budget has actually decreased in recent years. User fees have indeed been viewed by a number of legislatures as replacement for government general fund support. Given the federal budget outlook, this is also the most likely scenario on many federal lands. There are some potential answers to the dilemma. NPCA has called for the creation of a dedicated trust fund for national park fee revenues. Natural history cooperating associations provide and charge for a variety of information services, and use fees to directly support the public areas in which they operate. I serve on the board of a state park foundation which has received and expensed funds for the construction and maintenance of public use cabins, the purchase of park equipment and for conducting a resource survey.

The question of regressive fee structures is also complex. If the 1916 price for Yellowstone was simply adjusted for inflation, the comparable 1995 fee would be \$120 per day. That is about what a family would pay for a day of rides at Disney World or for tickets to attend a professional football game. I think Yellowstone is certainly worth it, but something still strikes me as very wrong about this simple analogy. Perhaps I come back to the question of meaning, but I do not believe our national parks and public lands should keep pace with the cost of other forms of recreation, and certainly not with the price of entertainment. I believe they have much more to do with education than entertainment. They are, as Robin Winks has said, "branch campuses of the greatest university on the planet". Perhaps we should look more to museums and libraries as we consider general entrance fees.

Regressive - or at least unfair - fee structures can also result from worthy motives. Several years ago, my wife and I took my parents to Hawaii, where we visited Volcanoes National Park. After flying from Alaska, renting a beach house for a week, shopping at Crazy Shirts, going to dinner and renting a car, we were allowed free passage to the park because we were in a car with senior citizens. Last year, at an historic site in Arizona, I watched as eight people of various ages, all dressed to the nines, exited a designer land yacht and entered the park free, while a family who had arrived in a well worn Ford paid four times over. I think we can refine the current system and still meet social objectives.

Not tampering a feeling of freedom is a bit harder to define, but we should make every effort to design fee collection systems which are least intrusive. The specter of "turnstiles at every trailhead" was one of the issues of concern to AMC members. In my experience, it is very important that fee requirements be well publicized and consistently administered. People find surprise and confusion to be very intrusive.

I believe general entrance fees should be kept relatively low in parks - \$20 in Yellowstone makes a lot more sense than \$120 - and in many public land areas they make no sense. It takes limited and defined points of entry, and adequate personnel to manage a fee system. However, whether in well defined parks or general tracts of public lands, fees can be used to provide and sustain developed opportunities such as campgrounds, boat launches and public use cabins, and good systems can be run by staff, volunteers or contractors.

Lastly, there are user fees associated with specific activities. I do not refer to permit fees for special events such as a music concert or a film shoot. These are specific decisions regarding the appropriate use of public land resources for individual commercial events. I am referring to outdoor, nature oriented activities consistently engaged in by citizen recreationalists on public lands, such as mountain climbing or river running. Charging fees for such activities can be appropriate, but establishing the fees requires some careful advance thinking.

In 1992, eleven people died on Mt. McKinley. The National Park Service spent a tremendous amount of money (and risked lives) to rescue injured climbers and retrieve bodies. The cost of the rescue operations was breaking the park budget, and Secretary Babbitt directed the Park Service to develop and implement a user fee for climbing Mt. McKinley. The Service was also directed to develop a fee program for climbing Mt. Ranier. In this case, Alaska's differences made a big difference.

The Service designed and communicated the program as an attempt to recover rescue costs. This raised two issues. First, while in Ranier the per user fee would be under \$50, in Denali it would be well over \$200. Second, because of the high fee, the climbing community felt they were being singled out and attacked. They argued strongly for ideas like "no rescue zones" and personal bonding, and they attacked several aspects of the Service's mountaineering program. Some of the arguments were simply unrealistic. History has repeatedly shown that climbers in trouble will call for help, and if they don't families will call politicians who will demand that the Service respond. However, some of the issues raised the the American Alpine Club and others were very thought provoking. What level of program is necessary? Could the program be operated more efficiently? Why Mt. McKinley and not other mountains in other Alaska parks? There were some good answers - such as the unique high altitude conditions on Mt. McKinley, but most of the good answers focused on things like the need for better climber orientation, pre-positioning of mountaineering personnel at altitude, not simply on actual rescues. In response, the Service changed its justification of the proposed fee, but not the fee proposal. At this point, all trust was lost. The final proposed fee was somewhat reduced,

but the American Alpine Club sued anyway. I believe the general public strongly supports a special and substantial fee for climbing Mt. McKinley, and I suggest the climbing community could have consented to the proposed fee had the discussion from the first centered on the mountaineering program, and not on rescue cost recovery.

As a side note, recovering the cost for rescues can become even more complicated in parks like Great Smoky Mountains where, while we may be inclined to think of rescue in terms of the backcountry adventurer, most of the rescues (and costs) involve the child on family vacation who walked 50' off the trail and became disoriented. In designing special activity fees, it is critical for managers to think hard about the particular characteristics of land, the users and the purposes of the program.

Lastly, in establishing any type of user fees for recreational uses, federal land managers can expect a high degree of scrutiny - even micro-management - from congress. Since 1918, Congress has sparred with the National Park Service over who has the authority to set and adjust fees, and the battle continues today. Two measures currently under consideration S. 1144 (Titles II and VI) and S. 964 take very different approaches to increasing park funding through entrance and use fees. The central issues differentiating the approaches in the legislation are the degree of latitude that should be allowed park professionals in assessing and collecting fees and the percentage of fee revenues which would be returned to the parks.

V. Taxes

Two forms of tax contributions have been considered by which recreational users could increase their financial support of public lands. In the NPCA/ CSU survey, respondents were informed that some park advocates have proposed a contribution on the federal income tax form to help fund the National Park System, and were asked if they would be willing to add a dollar to their tax payment or subtract a dollar from their tax refund. Nearly 80% expressed a willingness to make an additional tax contribution of \$1 to directly benefit the national parks. While the results of the survey are extremely encouraging, I believe the information must be viewed with extreme caution.

As with public support for user fees, Americans will likely only support an additional tax contribution which is voluntary and which they can direct to a specific purpose. They do not want increased federal taxes, they are willing to make a directed personal contribution. To achieve success, therefore, any tax contribution program would need to focus on a high-profile, highly defined target for donations. The National Park System might be such a target, but I doubt whether any other federal public lands would fit the bill. Moreover, it would be extraordinarily difficult, if not impossible, to achieve congressional approval for a specific tax contribution program. Declining federal budgets impact many worthy programs and services. Experience at the state level has shown that legislatures are decidedly unwilling to open the doors to what would surely be a parade of requests for tax "check off" funding. Successful state tax contribution programs in support of public

resources have arisen as public initiatives and focused on wildlife. The Fish and Wildlife Diversity Funding Initiative is such an initiative on a national scale.

The Initiative was developed and is being led by the International Association of Fish and Wildlife Agencies as a mechanism for generating adequate and dependable sources of funds specifically dedicated to the conservation and enjoyment of wildlife and wildlife habitats. The goal is to add up to \$350 million annually to state wildlife conservation agencies, through a user-pay, user-benefit funding mechanism similar to the Wildlife Restoration (Pittman-Robertson) and Sport Fish Restoration (Dingell-Johnson) acts through which sportsmen have supported wildlife management since the 1930's. The Initiative recognizes not only budget realities and the critical fiscal needs of many fish and wildlife agencies, but the changes in outdoor recreation use in our society. Revenues would be raised through a modest (0.25% - 5%) tax on a variety of equipment used in outdoor recreation and the enjoyment of wildlife (i.e. hiking boots, backpacks, tents, binoculars, bird seed, guide books, recreation vehicles) and would be used to fund management and habitat protection for non-game species. Substantial progress has been made by proponents in many states, but ultimate success will depend on the ability of supporters to broaden the coalition and convince the outdoor products industry to support the effort. While, if enacted, the Fish and Wildlife Diversity Funding Initiative will not provide direct financial support to federal land managers, in an era where "ecosystem management" and cooperative efforts between state and federal agencies is increasingly important, it could bring important benefits to federal public resources.

VI. The Real Question is How, Not Who

The Fish and Wildlife Diversity Funding Initiative demonstrates clearly that the real challenge is to improve resource management and public opportunities on all our public lands. From concessions, to fees to tax initiatives, responsible state land and wildlife managers are struggling to develop reasonable recreation user pay programs which preserve resources and maintain services. Because of differences in physical characteristics, purposes and values, and mandates among different public lands, not all of the approaches have universal application. I believe that federal land managers can learn a great deal from some of the programs used by the states. To suggest, however, as some policy makers have that transfer of federal public lands to the states will somehow magically improve their management is pure ideology. There are no magic wands, only tools. And while we should look with an eye toward innovation, we should start by looking in the most obvious places.

In the spring of 1995, pronouncements by congressional leaders of proposed cuts to the National Park Service budget raised concerns about the continued management of national parks, including the four national park units located in South Dakota. In response, Park Service personnel, tourism officials, and local citizens gathered to discuss the problem and seek potential solutions. Nearly unanimous support was expressed for implementation of park user fees to offset some of the costs of running the units. Congress turned back from

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its initial proposed cuts, but South Dakota Governor Bill Janklow called for a turnover of management of South Dakota's national parks to the State Game, Fish and Parks Department. Moreover, he suggested that current strategies under consideration for increasing financial support to the parks were woefully inadequate. In a June 29, 1995 letter to NPS Director Roger Kennedy, the Governor wrote, "Quite frankly, considerations like a realignment of fees or a readjustment of concessions policies, as some have suggested, are like rearranging the deck chairs on the Titanic." The Governor went on to label such strategies "meek, obsolete and irrelevant", and on August 8, 1995 the state submitted a "South Dakota Proposal to Keep the National Parks Open". Leaders in the House Resources Committee immediately seized on the proposal as a model for transfer of national parks across the country and urged a hearing.

There is little doubt that improved coordination and cooperation between state and federal land managers could improve resource protection and public opportunities in many locations. Joint management agreements are appropriate in certain cases and in others some truly innovative approaches should be considered. However, an examination of the South Dakota proposal is most revealing. At its core, it is based on four elements:

- * a federal block grant at the 80% level of current funding;
- * a contract for services from the National Park Service or some other kind of cooperative agreement;
- * a reduction in staff; and
- * recreational user fees.

In fact, the proposal summary stresses twice that the state "might need the latitude to supplement (federal) funds with certain user fees to support maintenance and operations". The only other suggestion is that the state would "use innovative, responsive management strategies", but no such strategies are outlined in the "detailed proposal", except for a vague reference that joint management of the Custer State Park and Wind Cave National Park buffalo herds could "possibly provide new revenues to offset federal park operations costs".

If the South Dakota situation is not definitive, it is at least illuminating. Custer State Park allows recreational bison hunting and timber harvesting. Wind Cave National Park does not. There is no doubt that additional fees could be generated in national parks (or on other public lands) by authorizing new uses not currently allowed and charging for such resource use. However, that is a deeper national debate about purposes and values than today's discussion about charging public land users for recreational uses which are currently authorized. What the South Dakota proposal does show, is that absent major changes in policies regarding use of public resources, a commitment for continued federal funding, better management through service contracts, and realignment of user fees are core elements of any realistic plan to improve and sustain our federal lands. These strategies, including fair and acceptable programs for Charging Public Land Users for Recreational Uses, are not like rearranging the deck chairs on the Titanic. They are more like shifting the load in the hold so the ship will not continue to list dangerously, but begin to sail on course.