



July 3, 2019

VIA FACSIMILE AND CERTIFIED MAIL

The Honorable Gail S. Ennis
Acting Inspector General
Department of Interior
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Dear Ms. Ennis:

On behalf of Democracy Forward Foundation and the National Parks Conservation Association,¹ we write to respectfully request that your office investigate the Department of the Interior's ("DOI's" or "the Department's") potentially unlawful decision to divert national park visitor fee funds collected under the Federal Lands Recreation Enhancement Act ("FLREA" or "Act") for President Trump's unprecedented Fourth of July programming on the National Mall. FLREA only permits visitor fee funds to be used for one of six enumerated purposes—none of which would encompass their use to fund "expansive displays of military hardware, flyovers by an array of jets including Air Force One, the deployment of tanks on the Mall and an extended pyrotechnics display."² To the extent the diversion of funds is impermissible under FLREA, it

¹ Democracy Forward Foundation and the National Parks Conservation Association are nonpartisan, nonprofit organizations.

² Juliet Eilperin et al., "Park Service Diverts \$2.5 Million in Fees for Trump's July Fourth Extravaganza," Wash. Post (July 2, 2019) ("Washington Post Article"), https://www.washingtonpost.com/politics/white-house-gives-tickets-to-trumps-july-fourth-extravaganza-to-gop-donors/2019/07/02/9109a566-9ce0-11e9-b27f-ed2942f73d70_story.html?utm_term=.7822f9ed9c22.

also violates the Antideficiency Act, which prohibits agency personnel from expending funds for unauthorized purposes and carries with it criminal penalties for a knowing and willful violation. Thus, there are serious questions as to whether this diversion of funds is consistent with federal law.

DOI's decision to divert the funds from their intended purpose—to maintain the parks and improve visitor experiences—also represents a gross breach of the public trust and is contrary to the Secretary of the Interior's duty to ensure that our national parks fulfill their "fundamental purpose" to "conserve . . . [and] provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired by the enjoyment of future generations." 54 U.S.C. § 100101(a); *see also* 16 U.S.C. § 1a-1 ("The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress."). Accordingly, we respectfully request that your office undertake a full review of DOI's potentially unlawful actions regarding the President's Fourth of July programming.

I. Diversion of National Park Fees to Fund President Trump's Celebration

In June 2019, the Department of the Interior announced that rather than the traditional Fourth of July fireworks celebration on the National Mall, it would be hosting an event called "Salute to America" featuring President Trump, a tribute to the armed forces, and a "one of a kind air show" over the National Mall.³ This announcement immediately raised substantial concerns, including by members of Congress, both as to the potentially political nature of the event, and as to whether the event would require or result in diversion of resources from pressing DOI priorities.⁴ Answers to these questions were not forthcoming.⁵ Additional reporting raised further concerns regarding the scope and politicization of the event, including reports that the Republican National Committee was distributing tickets to the event and that the programming would require an extended shutdown of air traffic to and from Reagan National Airport.⁶

On July 2, 2019, the Washington Post reported that DOI is "siphoning" \$2.5 million in national park entrance fees "typically used to enhance the visitor experience either on the Mall or

³ Tweet by @DOIPressSec (June 19, 2019), <https://twitter.com/DOIPressSec/status/1141395184627924992>.

⁴ *See* Letter to Hon. David Bernhardt, Secretary of the Interior, from Hon. Tom Udall et al., *Re: President's Fourth of July Event* (June 18, 2019), <https://www.tomudall.senate.gov/imo/media/doc/July%204%20letter%20to%20Interior%20FINAL%20.pdf>.

⁵ *See* Office of Hon. Tom Udall, "Interior Failing to Answer Questions About President's July 4th Event" (July 2, 2019), <https://www.tomudall.senate.gov/news/press-releases/udall-interior-failing-to-answer-questions-about-presidents-july-4th-event>.

⁶ *See* Kevin Liptak & Sarah Westwood, "Trump's Political Allies Receive VIP Tickets for July 4th Show," CNN (July 2, 2019), <https://www.cnn.com/2019/07/02/politics/vip-tickets-white-house-show/index.html>.

at smaller parks across the country, on projects ranging from repairing roads and bridges to habitat restoration.”⁷ The Post article noted that this diversion amounts to nearly 5 percent of the funds relied on by less profitable parks for needed upgrades and improvements.⁸ Notably, the article contained no explanation from the Department as to how this diversion of user fees for the President’s programming could be lawful.

II. Violation of the Federal Lands Recreation Enhancement Act

The Act authorizes the Secretary of the Interior to collect visitor fees, including entrance fees, at national parks and certain other DOI-managed lands. *See* 16 U.S.C. § 6802. But these fees, once collected, do not go into a general DOI account. Rather, they must be maintained separately in a special account. Eighty percent of the fees collected must go back to use at the national park where they are collected, leaving only 20 percent of the collected fees for use at parks that do not themselves generate a substantial amount of user fee revenue. *See generally id.* § 6806. And pursuant to FLREA, this remaining balance may only be used for specific purposes:

- (A) repair, maintenance, and facility enhancement related directly to visitor enjoyment, visitor access, and health and safety;
- (B) interpretation, visitor information, visitor service, visitor needs assessments, and signs;
- (C) habitat restoration directly related to wildlife-dependent recreation that is limited to hunting, fishing, wildlife observation, or photography;
- (D) law enforcement related to public use and recreation;
- (E) direct operating or capital costs associated with the recreation fee program; and
- (F) a fee management agreement established under section 6805(a) of this title or a visitor reservation service.

Id. § 6807(a).

None of these enumerated, permissible purposes would encompass their use to fund “a military-style extravaganza inspired by [President Trump’s] visit to a Bastille Day celebration,” replete with “displays of military hardware, flyovers by an array of jets including Air Force One, the deployment of tanks on the Mall and an extended pyrotechnics show.”⁹ Thus, siphoning needed funds from our national parks—which have a capital maintenance backlog of \$11.9 billion¹⁰—to pay for the President’s programming is not merely unconscionable. It would also be illegal.

Moreover, because FLREA does not authorize use of the funds for this purpose, authorizing this unlawful use would also constitute a violation of the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A). The Antideficiency Act, in pertinent part, prohibits “mak[ing] or

⁷ Washington Post Article, *supra* note 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *See* National Park Service, *Identifying & Reporting Deferred Maintenance*, <https://www.nps.gov/subjects/infrastructure/identifying-reporting-deferred-maintenance.htm> (accessed on July 3, 2019).

authoriz[ing] an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.” *Id.* A knowing and willful violation of the Antideficiency Act carries criminal penalties of a fine and/or imprisonment. *Id.* § 1350.

III. Request for Investigation

Because the Department’s decision to divert national park visitor fees to fund the President’s Fourth of July programming may violate federal law, we believe it is appropriate for your office to open an investigation into the matter. The Department’s decision countermands its duty to preserve and maintain our national parks for the enjoyment of future generations, and raises troubling questions surrounding the Department’s decision-making and its adherence to legal requirements. Accordingly, Democracy Forward Foundation and the National Parks Conservation Association respectfully request that your office review the following:

- Whether the use of national park visitor fees to fund the President’s Fourth of July programming violates FLREA and the Antideficiency Act.
- The process by which it was decided to divert FLREA funds for the President’s programming, including but not limited to whether doing so was ordered by the White House, and whether the Department consulted with the Department of Justice’s Office of Legal Counsel or career officials at the National Park Service or the Office of the Solicitor, and whether any dissenting views by career officials or others were overruled or ignored.
- Whether Department officials assessed the harm that will be inflicted on national parks, including specific national park projects, as a result of the diversion of funds.
- An accounting of the total amount of funds diverted from FLREA accounts to fund the President’s programming.
- An accounting of projects to which diverted entry fee funds were committed prior to the decision to divert these funds.

* * *

We hope you share our concerns about the Department’s actions in this matter. Please contact Nitin Shah at nshah@democracyforward.org or (202) 701-1778 if we may provide any additional information. Thank you for your time and consideration.

Sincerely,

/s/ Anne Harkavy

Anne Harkavy
Executive Director
Democracy Forward Foundation

/s/ Theresa Pierno

Theresa Pierno
President and CEO
National Parks Conservation Association