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August 28, 2012

Secretary of the Interior Ken Salazar
1849 C Street Northwest
Washington, D.C. 20204

Director, National Park Service Jonathan B. Jarvis
1849 C Street Northwest
Washington, D.C. 20204

Superintendent of the Great Smoky Mountains National Park Dale Ditmanson
Deputy Superintendent of the Great Smoky Mountains National Park Jim Fitzgerald
107 Park Headquarters Road
Gatlinburg, Tennessee, 37738

RE: Smoky Mountain backcountry camping tax

TO WHOM THIS MAY CONCERN:

This firm has been retained to represent a disgruntled and growing group of American citizens from Tennessee, Georgia, North Carolina, South Carolina, Virginia, Kentucky and other states all under an umbrella organization called Southern Forest Watch.

You are imposing a Tax on us without our Consent.

You are imposing a Tax on us in violation of Law.

You are imposing a Tax on us based upon deceit.

Before the lawsuit is filed against the United States of America, the plaintiff, Southern Forest Watch, will be properly constituted and existing as a corporate entity. There may be other plaintiffs.

Your backcountry camping tax is illegal.

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This letter outlines the basis of that lawsuit and the relief that will be sought.

5 U.S.C.A. § 702, provides:

“A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”

Not only will we be seeking that judicial review, we will also be seeking a mandatory injunction against those Federal officers personally responsible for compliance, to wit: the Secretary of the Interior Ken Salazar, the Director of the National Park Service Jonathan B. Jarvis, the Superintendent of the Great Smoky Mountains National Park, Dale Ditmanson, and the Deputy Superintendent of the Great Smoky Mountains National Park Kevin Fitzgerald and successors.

The following are “relevant statutes” upon which the lawsuit will be based.

16 U.S.C. § 1, *et seq*

This law establishes the National Park Service. It describes the only reasons for the National Park Service to exist.

“...The service thus established shall promote and regulate the use of the Federal areas known as national parks...by such means and measures as conform to the fundamental purpose of the said parks...which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

We are the future generations, and you are impairing our use and enjoyment of the Great Smoky Mountains National Park.

16 U.S.C.A. § 6801, *et seq*

This law is called the Federal Lands Recreation Enhancement Act or “FLREA.”

This law limits what the National Park Service, among other agencies, can do with federal lands.

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At trial, we will assert FLREA does not allow the National Park Service to charge this backcountry camping tax for a number of reasons.

16 U.S.C.A. § 6802 provides authority for the National Park Service to charge recreation fees only under certain conditions.

First, subsections 6802(d)(3)(E) and (F) apply to the National Park Service, and both subsections forbid entrance fees on any routes into the Great Smoky Mountains National Park.

More specifically, 16 U.S.C.A. § 6802(d)(3)(E) provides:

“The Secretary shall not charge an entrance fee or standard amenity recreation fee for the following:

“...(E) Entrance on other routes into the Great Smoky Mountains National Park *or any part thereof* unless fees are charged for entrance into that park on main highways and thoroughfares...” (Emphasis supplied.)

Second, subsection 6802(g), is titled “Expanded amenity recreation fee,” and subsection 6802(g)(1) is entitled “NPS and USFWS authority.” It states:

“Except as limited by subsection (d), the Secretary of the Interior may charge an expanded amenity recreation fee, either in addition to an entrance fee or by itself, at Federal recreational lands and waters under the jurisdiction of the National Park Service...when the Secretary of the Interior determines that the visitor uses a specific or specialized facility, equipment or service.”

Our proof at trial will include that sleeping on the ground, with fire rings and wires to hang backpacks do not qualify as “specific” or “specialized” equipment.

Third, we will assert that subsection 6802(d) *additionally* limits what the National Park Service can charge.

While it appears this interpretation has not been asserted in any proceedings, we have a good faith belief that the law does apply to the facts of this case.

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We will assert subsection 6802(g)(1) applies to the National Park Service, and subsection 6802(g)(2) applies to *other* federal land agencies.

Subsection 6802(g)(2) is separate and distinct from subsection 6802(g)(1). **Both** subsections independently begin with the words “...Except as limited by subsection (d)...”

Subsection 6802(d) is titled “Limitations on recreation fees,” and it provides additional limits on the National Park Service. One such limitation is:

“(E) For camping at undeveloped sites that do not provide a minimum number of facilities and services as described in subsection (g)(2)(A)...”

Subsection (g)(2)(A) provides:

“Use of developed campgrounds that provide at least a majority of the following:

- (i) Tent or trailer spaces.
- (ii) Picnic tables.
- (iii) Drinking water.
- (iv) Access roads.
- (v) The collection of the fee by an employee or agent of the Federal land management agency.
- (vi) Reasonable visitor protection.
- (vii) Refuse containers.
- (viii) Toilet facilities.
- (ix) Simple devices for containing a campfire...”

Great Smoky Mountains National Park backcountry campsites do not even come close.

While it may be determined this portion of FLREA does not apply to the National Park Service, there are other relevant statutes that clearly do apply.

Another discrepancy in the implementation of this “fee” is the National Park Service’s failure to allow public participation in the decision making process.

16 U.S.C. § 6803 is titled “Public participation.” It sets forth steps the Secretary must take to obtain input from a locality before charging a recreation fee.

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Proof at trial will show the National Park Service's "public participation" was essentially a ruse.

Additionally, 16 U.S.C.A. § 6802(b) provides "Recreation fees" shall be established in a manner consistent with or following six different items, five of which are admittedly to your discretion; however, one item is not discretionary.

“...(5) The Secretary shall obtain input from the appropriate Recreation Resource Advisory Committee, as provided in section 6803(d) of this title.”

Unless I am mistaken, your FOIA response did not include any communications with that advisory committee. Did you communicate with that committee? By contemporaneous, separate mailing, a FOIA request for this information is being sent.

The "standard amenity recreation fee" is defined in section 6802(f), which includes other curbs on your ability to tax.

Section 16 U.S.C.A. § 6802(g)(1) states you can charge an "expanded amenity recreation fee" "when the Secretary of the Interior determines that the visitor uses a *specific or specialized facility, equipment, or service.*"

The facts produced at trial will reflect that backcountry campsites have no specialized facilities, equipment or service. I imagine if a back packer ever camps in a backcountry campsite *along with* a ranger, that might be a service; however, two backcountry camping rangers cannot cover 100 +/- campsites and 15 shelters.

But that is what trials are for.

One count will be to request a United States District Court to review the DOI/ National Park Service's administrative proceedings to first find the actions undertaken by the DOI/National Park Service arbitrary, capricious, an abuse of discretion and not otherwise in accordance of law.

Also , subsection 6802(d)(4) is titled "No restriction on recreation opportunities," and it states:

“...Nothing in this chapter shall limit the use of recreation opportunities only to areas designated for collection of recreation fees.”

We will ask the court to determine and declare whether or not we can camp anywhere.

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5 U.S.C.A. § 706

The law further provides that “[t]he reviewing court shall—...

...(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court...”

We will ask the court to declare the DOI/National Park Service’s process in implementing this back packer tax as in excess of constitutional right, power, privilege or immunity and hold the agency’s actions, findings and conclusions in implementing this back packer tax as unlawful and set it aside.

Evidence will include, among other things, that you have disseminated public information that is blatantly false to drum up support for the tax.

1. Great Smoky Mountains Press Release dated March 7, 2012, titled “Smokies Backcountry Camping Fee Approved”

This press release that can be seen at <http://www.nps.gov/grsm/parknews/bc-camping-fee.htm>

It includes the following statement:

“...The Park developed the plan in order to improve its trip-planning and reservation services to users and to expand its backcountry Ranger presence to better protect park resources through enforcement of food-storage and other regulations and improved visitor education regarding Leave-No-Trace principles...”

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This press relief quotes “Great Smoky Mountains Superintendent Dale A. Ditmanson.”

“Most importantly, 100 percent of the revenue from this program will be invested in improving backcountry services through extended hours of the backcountry office, trip-planning assistance, online reservations, and protection of Park resources through increased ranger staff.”

Please find enclosed a copy of an internal DOI document. It is an undated “Memorandum” “F5419(5072)” from the “Regional Director, Southeast Region” to the “Acting Associate Director, Business Services, Washington Office.” It was obtained by a Freedom Of Information Act request. The document reflects that the quote includes falsehoods.

The Memorandum’s “Subject” is:

“Exception Requests for New/Increased Fees in the Southeast Region.”

It includes the following statement:

“...GRSM is proposing to institute a new fee for backcountry camping and shelter reservation and use. The park currently does not charge for these reservations and is proposing to begin charging a fee to cover the service charges and related costs of putting these sites onto the NRRS. The final actual fee will be determined through the civic engagement process and is likely to align with the total fees charged to the NPS by the NRRS. Having these sites on the NRRS will improve customer service for visitors wishing to reserve these sites as they will now have 24/7 access to reserve and/or change reservations rather than having to call the park during normal business hours. **There will be no increase in overall annual revenue as the result of this proposed increase as this will simply be a new fee to cover the recreation.gov service fees...**” (Emphasis supplied.)

False information is being used to steer support for the tax.

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2. **Avid Smokies hiker seeks access to comments collected over park backcountry fee**

The news article can be found at <http://www.knoxnews.com/news/2011/dec/04/avid-smokies-hiker-seeks-access-to-comments-over/?partner=RSS>

“Park Spokesman” Bob Miller is quoted in the article:

“...‘The park is not going to profit from this,’ Miller said. ‘We’re not proposing the fee just to aggravate people. The only way we can contemplate this is if we can improve on the services we’re not satisfied with.’

Miller said it is ‘very unlikely’ the park will reach a final decision on the backcountry camping fee before next summer in 2012.’...”

While Bob Miller is not quoted, the article relates:

“The fee would also pay to hire two backcountry rangers who would check campsites to prevent crowding that can damage natural resources and lead to food storage problems and encourage nuisance bears.” (Emphasis supplied.)

Again, the internal DOI document states:

“...There will be no increase in overall annual revenue as the result of this proposed increase as this will simply be a new fee to cover the recreation.gov service fees...” (Emphasis supplied.)

Obviously, Bob Miller provided the news article’s author with the information that “...[t]he fee would also pay to hire two backcountry rangers...”

False information is being used to steer support for the tax.

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3. Great Smoky Mountains National Park Looking To Backcountry User Fee To Improve Services, Protect Resources

The news article can be found at:

<http://www.nationalparkstraveler.com/2012/02/great-smoky-mountains-national-park-looking-backcountry-user-fee-improve-services-protect-resources945>

Superintendent Ditmanson is the source of information for this article. He is quoted throughout the article.

“...Pinched by an inadequate budget and unable to charge an entrance fee for any of his roughly 9 million yearly visitors, Great Smoky Superintendent Dale Ditmanson sees no way of improving visitor services and protecting backcountry resources without charging users who spend the night in the woods...”

When he *told* this writer his vision, the Superintendent *also knew* that:

“...[t]here would be no increase in overall annual revenue as the result of this proposed increase as this will simply be a new fee to cover the recreation.gov services fee...”

The Superintendent did not tell this writer what he really knew.

The Superintendent went further:

“...A fee system, he says, would extend the park's backcountry office to five eight-hour days, enable two rangers to patrol the backcountry daily, and provide users with an on-line reservation system...”

The Superintendent is not done.

“...Superintendent Ditmanson says. `And then staffing in the backcountry office to extend those hours from three hours to a full day operation, and two backcountry rangers. So that I think is getting a lot of mileage out of that.’ ...”

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To reiterate, when he **told** this writer his vision, the Superintendent **also knew** well that:

“...[t]here would be no increase in overall annual revenue as the result of this proposed increase as this will simply be a new fee to cover the recreation.gov services fee...”

The Superintendent apparently used false information to steer support for the tax.

“...‘Well, I guess that’s a good point,’ said Superintendent Ditmanson. ‘When I was at a public meeting talking to people, I admitted that we wouldn’t put the idea forward if we didn’t think we couldn’t **improve service to the public and protect the resources**. So from that perspective, have we put ourselves on a road to that kind of decision? Yeah, I can see how that can be interpreted.’...” (Emphasis supplied.)

“...If a fee program is instituted, Superintendent Ditmanson said it will underwrite two rangers whose sole responsibility will be patrolling the backcountry...”

A trial *de novo* by the reviewing court will reveal your backcountry campsite tax is unwarranted.

For instance, one of your first public justifications for this tax was “campsite overcrowding.” Your own numbers reveal otherwise. Superintendent Ditmanson has admitted as much to one of us. “Perhaps, that was the wrong argument to use.” One of the many indications of deceitful action is that he subsequently used other justifications which were not initially mentioned and which were not part of the statement which provided background for two public meetings on the matter.

In trying to shed the light on your tainted process in imposing this tax, Assistant Superintendent Kevin Fitzgerald advised my clients it was “illegal” to share copies of the public comments. Our subsequent FOIA request proved that was a false statement.

Other shadowy actions include apparently your **encouragement** of concessionaires to voice positive opinions for the backcountry camping tax.

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Other public pronouncements were patently false, including that your office had been “overrun” with complaints about problems with backcountry campsites. Another FOIA request revealed a total of 15 complaints for the past 3 years, most of those from a single individual who had *nothing* to do with backcountry campsites.

Another false statement of yours was for an “understaffed backcountry office.” Southern Forest Watch backpacks, and my clients have all the service from that office they need. Additionally, a solution was offered (Southern Forest Watch volunteers) that was *ignored*.

The following is copy of language from an email from Senator Lamar Alexander to a constituent.

“Thanks very much for getting in touch with me and letting me know what's on your mind regarding the backcountry reservation fees at the Great Smoky Mountains National Park.

On March 7, 2012, Great Smoky Mountains National Park announced the park will be implementing new reservation fees for backcountry camping beginning in 2013. These fees will be \$4 a night per person. The Smoky Mountains are a treasure of our state that millions of visitors come to see every year. These fees will help pay for additional rangers and improve customer service. While I want to ensure that the park remains affordable and open to all visitors it is important to protect resources that help preserve the beauty of our park.

I'm grateful you took the time to let me know where you stand on this issue, and I'll be sure to keep your comments in mind as these issues are discussed in Washington and in Tennessee.

Sincerely,

Lamar”

Where do you think Senator Alexander received his information?

Again, only after a FOIA request was it discovered this public announcement was completely and utterly **false**.

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Other falsehoods include the Superintendent representing that Congressional Representatives and Senators had received “No” complaints about the backcountry campsite tax. Witnesses, including those from Congressional offices, will testify otherwise.

Another dishonest action is your “forced” meeting with our group. Your purported meeting minutes are full of gaping holes. For the administrative record necessary for this lawsuit, please find enclosed a copy of your minutes and a copy of our minutes. Note the striking disparities.

4. Political Patronage

Your efforts have not been related to serving we citizens. Your course of action has, for a long time, been *exclusively* to indulge, coddle and enrich the “politically fortunate” establishment.

For instance, Ace Gap Trail is a backcountry trail that has existed within the Great Smoky Mountains National Park for *decades*. The trail’s location has existed for decades. Please find enclosed a map from the Blount County Property Assessor’s office, which *appears* to reflect, among other things, that Ace Gap Trail encroaches on tract “1.13”. That tract is 20.33 acres.

In 2004, former Governor Sundquist acquired tract 1.13.

Soon thereafter, under pressure from former Governor Sundquist, you voluntarily and illegally diverted and rerouted Ace Gap Trail off of tract 1.13, further back into the park away from Governor Sundquist’s new home.

At the very least, that property became property of the Great Smoky Mountains National Park by eminent domain decades before former Governor Sundquist even acquired the property in 2004.

You gave him property that was a part of the Great Smoky Mountains National Park.

During the discovery phase of the litigation, we expect to uncover agreements and conveyances. Also, a second FOIA request for that information is being sent contemporaneously herewith.

You also closed at least two separate campsites that were apparently too close to Governor Sundquist’s property.

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More recently, you are allowing those from Blackberry Farms to drive four-wheelers on backcountry hiking trails *within the borders* of the Great Smoky Mountains National Park. Citizens (also witnesses) have witnessed individuals riding these Blackberry Farms four-wheelers with a chainsaw, cutting down trees making the hiking trails wider for four-wheelers use.

Enclosed are pictures.

One picture shows a recently erected trail sign which appears to be within the border of the Great Smoky Mountains National Park. What is odd about the sign is that it is not a national park sign, and these are not trails on any *national park* trail maps within the national park. The trails apparently belong and lead to Blackberry Farms.

At the bottom of the trail sign, there is a green box that holds trail maps. Please find enclosed a copy of one of the trail maps. You have also closed at least one trail that limits the public's access to this portion of the national park.

A surveyor may confirm location of the sign and trails.

Other "establishment favors" apparently include outfitters over-booking trips to backcountry shelters in the Smoky Mountains: <http://www.rei.com/adventures/trips/weekend/smb.html>, REI REI apparently has dibs on shelter reservations.

Despite strident citizen protestations and documentation, you allow this to continue.

We expect to uncover additional transgressions during the discovery phase of the upcoming litigation.

Interestingly enough, our Declaration of Independence has a section describing various forms of tyranny of the English crown over the colonies. There are over 26 different examples of tyranny listed. One is "...For imposing Taxes on us without our Consent..."

Your tyrannical action is being conducted in derogation of the values and purposes for which the Great Smoky Mountains National Park has been established.

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This information is posted at: <http://www.southernhighlanders.com/Mortonpage.html>

If you have any questions, please do not hesitate to contact me.

Very truly yours,

MORTON & MORTON, PLLC

J. Myers Morton

cc: Michael Stevens, Office of the Regional Solicitor, U.S. Department of the Interior
John Quillen
The Honorable John J. Duncan, Jr. Via Hand Delivery
The Honorable Lamar Alexander Via Hand Delivery
The Honorable Bob Corker Via Hand Delivery
The Honorable Phil Roe
The Honorable Chuck Fleischmann
The Honorable Scott DesJarlais
The Honorable Marsha Blackburn
The Honorable Jim Cooper
The Honorable Diane Black
The Honorable Stephen Fincher
The Honorable Steve Cohen
The Honorable Richard Burr
The Honorable Kay Hagan
The Honorable G. K. Butterfield, Jr.
The Honorable Renee L. Ellmers
The Honorable Walter B. Jones, Jr.
The Honorable David Price
The Honorable Virginia Foxx
The Honorable Howard Coble

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The Honorable Mike McIntyre
The Honorable Larry Kissell
The Honorable Sue Myrick
The Honorable Patrick McHenry
The Honorable Heath Shuler
The Honorable Mel Watt
The Honorable Saxby Chambliss
The Honorable Johnny Isakson
The Honorable Jim DeMint
The Honorable Mitch McConnell
The Honorable Rand Paul
Dr. Daniel P. Matthews
Dale Keasling
Jim Hart
Kay Clayton
Stephen Woody
Nancy Daves
Victoria Fulmer
Bruce Hartman
Luke D. Hyde
John Mason
Jim Ogle
Justice Gary Wade
Mark Williams
Dr. Myron Coulter
John Dickson
Natalie Haslam
Mary Johnson
Julie Ann Morton
John B. Waters, Jr.
David White
Sandy Beall
Mimi Cecil
Diane Matthews Deener
Linda Ogle
J.H. Roberts
Jack Williams
Don Sundquist