

**Congress of the United States**  
**Washington, DC 20515**

February 6, 2019

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G. Street, N.W.  
Washington, D.C. 20548

Dear Mr. Dodaro:

The National Park Service (NPS) was among those agencies impacted by the partial government shutdown. In the agency's shutdown contingency plan, NPS states that upon a lapse in appropriations, it "will cease providing visitor services, including restrooms, trash collection, facilities and road maintenance (including plowing), campground reservation and check-in/check-out services, backcountry and other permits, and public information."<sup>1</sup>

Although NPS did not conduct park operations or visitor services under the contingency plan, NPS and the Department of Interior (DOI) decided that some national parks were to remain open and accessible to visitors during a lapse in appropriations. NPS's contingency plan states, however, that "[i]f visitor access becomes a safety, health or resource protection issue (weather, road conditions, resource damage, garbage build-up to the extent that it endangers human health or wildlife, etc.) the area must be closed."<sup>2</sup> The decision to keep the parks open while suspending attendant services is a departure from usual practice. During the government shutdowns of 1995 and 2013, national parks remained closed in the interest of park preservation and public safety.

After the partial shutdown began and NPS's contingency plan went into effect, there were disconcerting news reports of injuries and fatalities at unmonitored national park sites.<sup>3</sup> Additionally, there were many troubling accounts of trash and waste accumulation, vandalism, and stories of visitors driving off road and engaging in other damaging behaviors at national park sites, all of which present concerns for the continued vitality of these precious lands.<sup>4</sup> It is evident that NPS and DOI allowed national parks sites to remain open without adequate staff and services to protect the parks and their visitors. Rather than close the national park sites in accordance with the contingency plan directive for areas experiencing safety, health, or resource protection issues, NPS diverted fee collections typically used for other activities to conduct services to keep the parks open.<sup>5</sup>

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<sup>1</sup> *National Park Service Contingency Plan* (Jan. 2019), at 1, available at <https://www.doi.gov/sites/doi.gov/files/2018-01-nps-contingency-plan.pdf> (Contingency Plan).

<sup>2</sup> *Id.* at 4. (emphasis in original).

<sup>3</sup> Darryl Fears and Juliet Eilperin, *Three dead in national park system accidents as shutdown wears on*, *The Washington Post* (Jan. 5, 2019), available at <https://www.washingtonpost.com/energy-environment/2019/01/04/three-dead-national-parks-shutdown-wears/?noredirect=on> (last visited Jan. 16, 2019).

<sup>4</sup> Stephanie Ebbs, *National parks group creates emergency fund to help parks recover from government shutdown*, *ABC News* (Jan. 10, 2019), available at <https://abcnews.go.com/Politics/national-parks-group-creates-emergency-fund-parks-recover/story?id=60297053> (last visited Jan. 16, 2019); Stephanie Ebbs, *Despite damage, Joshua Tree National Park stays open and will increase access during government shutdown*, *ABC News* (Jan. 10, 2019), available at <https://abcnews.go.com/US/joshua-tree-national-park-dealing-damage-government-shutdown/story?id=60237484> (last visited Jan. 16, 2019); ).

<sup>5</sup> Eli Watkins and Gregory Wallace, *National Park Service says it will use visitor fees to keep parks running through shutdown*, *CNN* (Jan. 6, 2019), available at <https://www.cnn.com/2019/01/06/politics/national-park-service-visitor-fees/index.html> (last visited Jan. 16, 2019).

In the Consolidated Appropriations Act, 2018, NPS received a fiscal year appropriation for Operation of the National Park System (ONPS) that was available “[f]or expenses necessary for the management, operation, and maintenance of areas and facilities administered by the National Park Service and for the general administration of the National Park Service . . . .”<sup>6</sup> According to NPS’s fiscal year 2018 congressional budget justification, this discretionary appropriation is used to provide visitor services, park protection and facilities maintenance, among other things.<sup>7</sup> Included among the activities funded by the annual ONPS appropriation is a health and safety function to avoid preventable injuries, as well as daily custodial and janitorial services.<sup>8</sup>

NPS also has authority to collect entrance fees at some park sites and to retain the amounts for use in accordance with the Federal Lands Recreation Enhancement Act (FLREA).<sup>9</sup> Section 6807 permits the use of these fees for “repair, maintenance, and facility enhancement related directly to visitor enjoyment, visitor access, and health and safety[,]” among other activities. According to NPS’s budget justifications for fiscal years 2018 and 2019, FLREA amounts “are used to conduct visitor-related, critical deferred maintenance and facility condition improvements on visitor use facilities, [to] restore natural and cultural resources for visitor enjoyment, and [to] expand and improve educational and interpretive programs.”<sup>10</sup> Examples of past projects funded by NPS’s recreation fees include resurfacing a road, replacing an outdoor visitor map, and installing bear-proof food storage units at a campground.<sup>11</sup>

NPS’s contingency plan provides that parks that collect fees under FLREA “will utilize available retained recreation fees balances to provide basic visitor services in a manner that maintains restrooms and sanitation, trash collection, road maintenance, campground operations, law enforcement and emergency operations, and staffing entrance gates as necessary to provide critical safety information.”<sup>12</sup> Further, DOI amended NPS’s contingency plan on January 5, to provide that parks with available FLREA balances will “immediately utilize such funds” for these purposes until they are gone.<sup>13</sup> DOI also intimated that parks without fees may receive amounts for these purposes.<sup>14</sup> The use of FLREA amounts to maintain restrooms and to collect trash appears to be inconsistent with the historical use of these funds and would seem to overlap with the historical use of NPS’s ONPS appropriation.

While NPS’s annual ONPS appropriation and FLREA each provide funding for maintenance activities, GAO has opined that where two appropriations can reasonably be interpreted to be available for an expenditure not specifically mentioned in either, the agency may determine which appropriation to charge for the expenditure.<sup>15</sup> Once the agency has determined to charge a particular appropriation, it must continue to charge that appropriation to the exclusion of the other, unless Congress has clearly demonstrated that multiple appropriations may be available for the same purpose.<sup>16</sup> We request a legal

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<sup>6</sup> Pub. L. No. 115-141 (Mar. 23, 2018).

<sup>7</sup> DOI, *Budget Justifications and Performance Information Fiscal Year 2018, National Park Service*, available at [https://www.doi.gov/sites/doi.gov/files/uploads/fy2018\\_nps\\_budget\\_justification.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/fy2018_nps_budget_justification.pdf) (FY 2018 CBJ)

<sup>8</sup> *Id.* at ONPS-ParkProt-2. DOI, *Budget Justifications and Performance Information Fiscal Year 2019, National Park Service*, at ONPS-53, available at [https://www.doi.gov/sites/doi.gov/files/uploads/fy2019\\_nps\\_budget\\_justification.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/fy2019_nps_budget_justification.pdf) (FY 2019 CBJ).

<sup>9</sup> 16 U.S.C. § 6807

<sup>10</sup> FY 2018 CBJ, at Rec Fee-2.

<sup>11</sup> FY 2019 CBJ, at Rec Fee-7, Rec-Fee 9-10.

<sup>12</sup> Contingency Plan, at 4.

<sup>13</sup> Memo from Acting Secretary, DOI, to Deputy Director, NPS (Jan. 5, 2019).

<https://www.nps.gov/orgs/1207/upload/Secretarial-Memorandum.pdf>

<sup>14</sup> *Id.*

<sup>15</sup> *See, e.g.*, B-307382, Sept. 5, 2006.

<sup>16</sup> *Id.* *See also* B-328477, Sept. 26, 2017.

opinion from GAO regarding whether the obligation and expenditure of FLREA amounts for activities typically charged to NPS's annual ONPS appropriation violates appropriations law principles.

If you have any questions regarding this request, please contact Rita Culp of my staff, who may be reached at (202)225-3081. Thank you for your attention to this matter.

Sincerely,



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Betty McCollum  
Chair  
Committee on Appropriations  
Subcommittee on Interior,  
Environment, and Related Agencies



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Raúl M. Grijalva  
Chairman  
Committee on Natural Resources