

NOT THE "CHANGE" WE EXPECTED

Obama Retains Bush Legal Defense of Public Land Recreation Fees

Not the "Change We Need" for volunteer groups fighting to keep public lands accessible and affordable. Instead, there has been no change at all. Our new President's legal army continues to defend--successfully and expensively--the Bush administration's obsession with the Recreation Access Tax.



By Bill Schneider, 3-18-10

“Change We Need.” You remember it, right? Heard it at least a thousand times, correct?

But based on recent events, Barack Obama’s campaign slogan should’ve been “No Change Needed” because public land users have all been short-changed again by the Forest Service (FS) with full support of the new administration.

Critics of the Federal Land Recreation Enhancement Act (FLREA) or Recreation Access Tax (RAT), as we call it, have been quick to blame it on the evil, pro-privatization, environmental unfriendly Bushies, so I guess it’s a real shock to us to see the Obama administration making no change at all in the defense of the aggressive implementation of maligned law.

Case in point. After a five-year legal battle over a particularly abusive use of RAT on Mount Lemmon in Arizona, the power of the federal government legal machine has finally prevailed in exhausting the resources of a few small volunteer groups trying to preserve public access to public lands.

You can read the entire court decision [here](#), but briefly, volunteer groups led by the [Western Slope No-Fee Coalition](#) (WSNFC), challenged the validity of the so-called Mount Lemmon HIRA, a FS invention of convenience to allow the agency to charge for birdwatching, climbing, fishing, hiking, hunting, and even parking or driving on state highways passing through national forest land we all own.

A HIRA is FS-speak for High Impact Recreation Area, but in practice, it should stand for Highly Insulting Revenge Action. That's all it is, vindictiveness against last-minute amendments in FLREA that Congress approved to prevent the FS from charging a fee for entering public lands or for parking or any other use of our national forests where the public didn't use "amenities," which are defined in the law as physical or developed improvements like campgrounds, picnic areas, restrooms, and visitor centers. By creating HIRAs, which are not authorized or even mentioned anywhere the FLREA, the FS gets around all of those pesky restrictions by charging access to the HIRA itself, including parking along the highway, which was the basis of the Mount Lemmon suit. ([Click here](#) for earlier coverage of the lawsuit.)

"The judge gave the FS carte blanche to ignore the very specific prohibitions in the RAT on where fees can be charged as long as they first declare a High Impact Recreation Area," Kitty Benzar, executive director of WSNFC, told *NewWest.Net* in an email. "Within a HIRA none of the prohibitions apply--sort of like a Black Hole where the normal laws of physics are suspended."

Benzar's more-pointed interpretation of the judge's decision: "In other words, the law's prohibition against a fee for parking where there are no amenities does not prohibit the Forest Service from charging a fee to park where there are no amenities."

WSNFC has also challenged the FS "toll" to drive on a state highway up to Mount Evans in Colorado, perhaps the most inflammatory fee area of them all, but Benzar is not optimistic about the outcome. It's simply so time-consuming and costly to stand up to the federal government, and the solicitor's office delights in making it even more time-consuming and expensive with legal maneuvering and delays that, by design, eventually wear the volunteer spirit to the bone.

Worse, perhaps, the Obama administration has rubber-stamped yet-another Bush administration policy. Instead of giving us the "Change We Need" and calling off the legal dogs when he moved into The White House, Obama let his solicitors continue to pursue the legal defense of the unpopular policy and passed up multiple opportunities over the past 15 months give us a break, for a change, and show support for keeping public lands more accessible and affordable to low- and middle-income Americans.

FLREA allows the FS to charge a "Standard Amenity Recreation Fee," and the agency has morphed this legalese into the HIRA concept. But the FS can only charge this fee if the recreation site included in the HIRA has *all six* of the following "amenities"--designated developed parking; a permanent toilet facility; a permanent trash receptacle; interpretive sign, exhibit, or kiosk; picnic tables; and security services.

To date, the FS has created 97 HIRAs, which include 981 recreation sites such as campgrounds and picnic areas. One, the Red Rocks HIRA on the Coconino National Forest in Arizona, is whooping 160,000 acres. Of those 981 recreation sites, 739 or 75 percent lack one or more of these six “amenities,” but that doesn’t stop the FS from ignoring the law.

Interestingly, the FS has gone easy on the Northern Region covering Idaho and Montana, home of two powerful, anti-RAT Senators, Max Baucus (D-MT) and Mike Crapo (R-ID). Each state has only one small HIRA--Lake Como on Montana’s Bitterroot National Forest and Payette River on Idaho’s Boise National Forest. Don’t bet on it staying that way too much longer, though. As soon as the politics cools down, the Northern Region will have more and larger HIRAs.

So, here’s the punch line: If Senators Baucus and Crapo need any more incentive to prioritize S. 868, their bill to repeal FLREA, the Mount Lemmon decision should suffice.

“The decision is very bad,” Benzar said, “but I hope it is so bad it’s good in the sense that Senators Baucus and Crapo must do something legislatively if they want Americans to be able to access National Forests in undeveloped areas without paying a fee. Clearly we cannot rely on the agency following the law voluntarily, and now we cannot look to the courts for relief.”