



AGENCY SLAPPED DOWN AGAIN BY FEDERAL JUDGE

Earth to Forest Service: Recreation Fee Program Is Still Illegal

Now that another court has told the USFS that creating High Impact Recreation Areas is an illegal interpretation of the federal law, will the agency get the message or keep appealing until the federal legal machine prevails?

By Bill Schneider, 9-29-10

Since December 2004 when the Bush Administration talked Congress into tacking the Federal Lands Recreation Enhancement Act (FLREA) onto a must-pass budget bill as a dreaded “midnight rider” and made it the law of the land without public debate or congressional vote, it has been more than controversial. The Forest Service (FS) immediately started illegally interpreting the law as a license to charge the public entrance fees to drive, walk or ride a bike into National Forests and to park along state highways passing though federal land.

Citizens protesting the illegal policy have won court cases in the past ([click here](#) for details), but in every case, the FS reacted by appealing with the full force of the federal legal machine until it prevailed over volunteers hoping for a little justice.

Perhaps the most serious violation of the law, if not public responsibility, has been the creation of nearly a hundred High Impact Recreation Areas (HIRAs) throughout the National Forest System. What the FS did, in essence, was select the most prized recreation areas, public land most heavily used by the public, and drew lines around them, put up signs requiring fees and toll booths and hundreds of “iron rangers” to collect the money, and made it illegal for the public to drive, bike, hunt, fish, or hike on millions of acres of public land--or even park for a few minutes to enjoy the scenery along a state highway passing through a HIRA. FLREA--called RAT, Recreation Access Tax, by detractors--specifically prohibits all this, but the FS apparently ignored that legal language because it did not fit the plan.



Perhaps the latest court decision will finally make a difference.

On September 14, Federal Magistrate Judge Mark Aspey in Flagstaff, Arizona granted a motion by Sedona resident Jim Smith to have his ticket for failure to pay a FS recreation fee dismissed.

Heaven forbid! Smith had parked overnight at the Vultee Arch Trailhead in the Red Rocks HIRA in the Coconino National Forest. He parked in a dirt parking lot with no “amenities” (picnic tables, toilets, etc.) at end of a dirt access road. Then, he hiked into a remote campsite, also with no “amenities,” stayed overnight, and returned to find a ticket on his vehicle because it did not display a Red Rock Pass.

The Red Rock Pass fee program is among the most outrageous in the nation. It requires an access fee to enter a huge tract (160,000 acres) of federal land, much of it undeveloped backcountry.

Instead of paying the fine, Jim challenged the FS's authority to levy this fee for a reason obvious to anybody who has read FLREA. The law specifically prohibits fees for parking, general access, walking through federal land without using facilities and services, camping in dispersed undeveloped areas, or in any location that does not offer reasonable access to six specific amenities, which are listed in the law, as "permanent toilet, permanent trash container, picnic table, developed parking, interpretive signage, and security services."

The Vultee Arch Trailhead offers none of these amenities; it's only a dirt parking lot where you leave your vehicle to go hiking. And the law says both the parking and the hiking must be free of charge. The nearest toilet, incidentally, is seven miles away, ten miles to the nearest garbage can.

All facts conveniently and illegally ignored by the Forest Service for years.

I've never met Jim Smith, but I already admire him. Like so many of us, he couldn't afford a pricey lawyer, so he represented himself against the full might of the federal government--and won! ([Click here](#) to read his own version of the event in a guest column he wrote for *NewWest.Net.*)

The judge not only bought Jim's presentation, but in his decision, he also called the FS's interpretation of FLREA "absurd." ([Click here](#) to read the entire decision.)

"This is a very important decision with national implications," noted Kitty Benzar, executive director of the Western Slope No-Fee Coalition, the primary nonprofit group fighting the FS on its illegal fee program, in a press release. "Within a HIRA they (the FS) have been claiming the authority to charge a fee for any activity at all as long as the six amenities exist somewhere in the HIRA, no matter how scattered or how far away. This interpretation has resulted in visitors being charged fees to access millions of acres of dispersed undeveloped backcountry."

And Judge Aspey agrees. Hopefully, in his decision, he finally sent a message to all National Forests that they can forget about prosecuting somebody for simply obeying the law by not paying a fee for parking at a trailhead and taking a hike on their own land.

Regrettably, though, the Coconino National Forest has not taken those signs down since the decision and continues to charge the fee, typical to the agency's callous disregard for the law.

Back in 1996, the camel poked its nose under the tent when the Clinton administration allowed the FS to experiment with fee charging. At the time, it was called the "fee-demo program." Then, the Bush administration made it full-scale madness by ramming FLREA down our throats with no chance to even protest it and gave the FS full reign to aggressively implement it, which the agency quickly did. Now, it's up to the Obama administration to step in and stop the insanity. Instead of appealing the Smith decision, hopefully somebody in the White House can make a call to the FS bosses and tell them to just disband the HIRAs and obey the law--or better yet, repeal it.

Footnote: Senators Max Baucus (D-MT) and Mike Crapo (R-ID) have introduced a bill (S. 868) to repeal FLREA, but Congress has taken no action on the bill. After introduction, Senator Jon Tester (D-MT) jointed as a co-sponsor. [Click here](#) for more details.

To read NewWest.Net's extensive coverage of the recreation fee issue, [click here](#).

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Comment By Anita R, 9-29-10

Why do you BLAME Pres. Clinton and Bush and Congress for actions of the Forest Service. Your own article says that the FS is acting againsts the policy laid out in FLREA. Your personal comments against Pres. Bush are just that. The facts of the issue as you have presented them don't justify the attacks.

Comment By Peter, 9-30-10

This policy started with Clinton and was embraced by Bush (and now apparently by Obama too). To this point none of these Presidents has done anything to rein in agencies like the Forest Service. The Executive Branch -and Congress- could easily stop these abuses, but being Republican or Democrat, they have not. That's a real sad failure of the system.

Since the time of the Clinton administration the US Forest Service has received budget increases to the tune of three times the rate of inflation. Nonetheless they keep screaming "we're broke," and demanding more. The charging of public lands access fees -their power to implement direct taxation with very little oversight- is nothing but deception if not pure extortion.

Anyway, good decision on the part of the Arizona judge. Maybe we will now actually see some "change."

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