

# High Country News

## Public lands agencies are charging for nothing

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If a fee falls in the forest, yet rangers refuse to listen, can the government still keep charging you that fee? Well, yes, if you're in Sedona, Ariz., within the Coconino National Forest's Red Rock Ranger District, and in other forests as well.

Apparently, even federal judges can't stop the agency from taking your money. If you've bought a Red Rock Pass lately, which enables you to park your car and go for a hike in the forest, you may have been duped into buying a pass that legally, you don't need to buy.

That's what the U.S. 9th Circuit Court of Appeals ruled on Feb. 9, 2012, in a case involving fees levied by the Coronado National Forest in Tucson, Ariz. The appeals court ruled that the Forest Service had been illegally charging fees that are expressly prohibited by the Forest Lands Recreation Enhancement Act of 2004. Since that decision, the court's ruling would seem to apply to all national forests all over the country, right?

But if you take a look around the Red Rock Ranger District here in Sedona, signs continue to call some locations "fee areas," and other signs warn that "all parked vehicles must display a valid recreation pass."

According to Connie Birkland, public affairs specialist for the Red Rock Ranger District, the signs are fine and legal because "the Mt. Lemmon decision (in Tucson) doesn't seem to affect us. We are not interpreting it as such nor do we feel we are affected by it."

But here's what the federal land-enhancement law specifies and what the court upheld: A site must have six amenities in place in order for a fee to be charged *at any location*. Those six required amenities are designated developed parking; a permanent toilet facility; a permanent trash receptacle; an interpretive sign, exhibit or kiosk; picnic tables; and security services.

The law expressly prohibits fees "*solely for parking*, undesignated parking, or picnicking along roads or trail-sides for persons who are driving through, walking through, boating through, horseback-riding through, or hiking through federal recreational lands and waters without using the facilities and services; and for camping at undeveloped sites that do not provide a minimum number of facilities and services."

In the *US v. Smith* landmark case about fees, Sedona resident Jim Smith challenged a ticket he received

for failing to display a pass while his car was parked in an undeveloped area. In his decision in this case, Judge Mark E. Aspey of Flagstaff wrote that “(The Forest Lands Recreation Enhancement Act) is an extremely comprehensive and precise statutory scheme clearly delineating specific instances in which the public may be charged an amenity fee ... and quite plainly prohibiting the agency from establishing any system which requires the public to pay for parking or simple access to trails or undeveloped camping sites.”

In what seems like an effort to create additional sites where fees can still be collected following the Smith decision, the Coconino National Forest “enhanced” as many locations as possible. Of course, these new facilities will now require additional funds to be properly maintained.

Then along came the 9th Circuit Court of Appeals decision. The lower court had ruled that it was not necessary for the Forest Service to determine whether a visitor used any amenities while recreating on national forest land. The appeals court scotched the federal agency position, which was that so long as the amenities were present in an “area,” a fee could be charged.

In the Appeals Court decision, U.S. District Judge Robert W. Gettleman wrote that the agency’s arguments on this point were “illogical.” No fee, the judge said, could be charged solely for parking, even if amenities were present. In fact, said Judge Gettleman, “everyone is entitled to enter national forests without paying a cent.”

But the Forest Service disagrees with this court decision. On March 1, the agency sent out a press release saying that fees would continue on national forests and that news outlets had “misportrayed a recent court decision” when they indicated anything to the contrary. Yet the agency failed to appeal the case to the Supreme Court, and the case has not been reopened on the local level, which had been a possibility.

So fees have fallen flat in the forest, and no-fee activists believe that the appeals court decision must now apply to every national forest. While that may be true, the news seems to have fallen on deaf ears.

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