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Appeals court strikes down parking fees for use of undeveloped areas in southern Ariz. forest

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FLAGSTAFF, Ariz. — Roadside picnickers, hikers and campers using undeveloped areas of a southern Arizona forest cannot be charged for what amount to parking fees, a federal appeals court ruled in a case that plaintiffs say could have broad impact on U.S. Forest Service policies.

The Coronado National Forest collects fees from all drivers who park in a mile-wide swath of forest running along the 28-mile Catalina Highway, the only paved road to the top of Mount Lemmon outside of Tucson.

Forest officials had argued that the fees are valid because drivers, regardless of whether they plan to recreate in developed areas, have access to amenities required under federal law for the high-impact recreation area.

The 9th Circuit U.S. Court of Appeals called that argument illogical in a Thursday ruling and sided with recreational users.

"Everyone is entitled to enter national forests without paying a cent," Judge Robert Gettleman wrote for the San Francisco-based court, overturning a trial court's decision.

Congress enacted a structure in 2004 that gives federal land management agencies authority for 10 years over recreation fees, but the fees are limited to sites that have a certain level of development, such as parking, toilets, trash bins, picnic tables and security services. The Recreation Enhancement Act prohibits the Forest Service from charging standard fees for things such as hiking, picnicking and camping in undeveloped areas after people park.

Forests nationwide already were undergoing a review of the act when the 9th Circuit handed down its decision. The agency didn't give specific direction other than to rename high-impact recreation areas. Some forests have proposed eliminating fees or breaking up areas in which fees are assessed.

"In light of what we've heard from the public, in light of how some of the language is interpreted in the courts and in light of what's truly fair, we're working at this level with the forests to determine, 'are we really in line with the intent,'" of the act, said Karen Carter, a spokeswoman for the Forest Service's Southwestern Region, based in Albuquerque, N.M.



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Mary Ellen Barilotti, one of the plaintiffs' attorneys in the Mount Lemmon case, said she is hopeful the appellate court ruling will bolster a case she recently re-filed over fees for parking and stopping at scenic overlooks at Mount Evans in Colorado. Barilotti said she's also helped people representing themselves in similar cases in Washington and Oregon.



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"I can't imagine, assuming it's finalized, that it won't affect all other places," she said.

The Coconino National Forest's Red Rock Ranger District recently changed its recreation fee structure following a case in which a Sedona man successfully fought a citation he received for parking at a trailhead then hiking into the forest and camping for a night at a non-developed, dispersed site. The federal government argued that the trailhead was in a 160,000-acre area where an amenity fee could be charged under the Recreation Enhancement Act, but a federal magistrate disagreed and dismissed the citation.

The fee area in the northern Arizona district that gets about 1.5 million visitors a year has now been reduced to 11,000 acres. A day pass is \$5, and an annual pass is \$20.

"If any of the recreation folks choose not to buy the pass, it will be the resident who knows where to go not to pay the fee," said district spokeswoman Connie Birkland. "It's not that they don't support the program."

Chris Wallace, of Tucson, is not a fan of the recreation fee at Mount Lemmon. She said she considers it another tax on residents who already contribute to the maintenance of public lands. She was cited in 2005 for parking in front of a locked gate that led to a campground and picnic area, and a second time for parking near a trailhead without paying. One ticket was dropped, but she had to pay a fine for the latter.

Wallace was among the group of recreationists who sued the Forest Service over fees at Mount Lemmon, although she was dismissed as a plaintiff.

"I'm hoping this case will show how unpopular these fee structures have been and that Congress will do away with them," she said. "Ultimately, I'm looking for a legislative remedy to it as well."

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