Ruling affects forest use fees

Arizona case could force U.S. Forest Service to stop charging fees for use of undeveloped forest areas

By Paul Fattig
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A ruling in an Arizona case by the U.S. 9th Circuit Court of Appeals in San Francisco may ultimately cut fees for visiting undeveloped sites on national forestland in the Pacific Northwest.

The unanimous decision by the court concluded that the 2004 Federal Lands Recreation Enhancement Act prohibits the U.S. Forest Service from charging fees to visitors interested in such activities as hiking, picnicking or camping in undeveloped areas on national forests.

The ruling involved four hikers who objected to paying what is known as an Adventure Pass fee of $5 per day or $30 a year while visiting Mount Lemmon in the Coronado National Forest in Arizona. The decision reversed a district court ruling.

In national forests in Oregon and Washington, a fee for recreational use is called the Northwest Forest Pass, and separate fees exist for various recreational sites. No sites in the Rogue River-Siskiyou National Forest require a Northwest Forest Pass, although the forest has three day-use recreational sites where fees are charged, officials said. Those fee sites aren't expected to be affected by the ruling, they added.

Fees for recreational use were authorized by Congress as the Recreation Fee Demonstration Program in 1996 to raise funds for the upkeep of recreational sites. The program was met by opposition from many forest users throughout Oregon. The 1996 law was superseded by the 2004 act.

Agency officials, who have 90 days to appeal the Coronado forest ruling to the U.S. Supreme Court, declined to comment on specifics in the case, noting it remains in litigation. The appeals court decision was released Feb. 9.

"The Forest Service is reviewing the ruling," said Virginia Gibbons, spokeswoman for the Rogue River-Siskiyou forest. "The fee program will continue unchanged for now."

Mary Ellen Barilotti, an attorney based in Hood River who argued the case for the plaintiffs, told the Mail Tribune that the decision is significant and will affect similar fees in the West.

"I would not be surprised if they make changes to whole fee program," said Barilotti, a veteran of similar cases. "They have lost a couple of these cases in the last few years."

In the 9th Circuit case, the judges were interpreting the 2004 act, she said, and ruled that someone hiking through a developed area in a national forest but not using the facilities is also not required to pay a fee.

"This has been going on for quite some time," she said of the recreational fee controversy. "In the

Columbia River basin (on national forestland), both in Washington and Oregon, you are required to pay a fee just to take a walk."

The appeals court decision is likely to change that, she said.

"The decision is outstanding," said Bend resident Scott Silver of the Wild Wilderness group. "The decision didn't rely on some esoteric, controversial reading of the law. Any person with any integrity and competence would reach the same conclusion as the court did.

"The Forest Service has been remiss in its interpretation of the (2004) law since it was written," he added.

The 9th Circuit Court judges concluded the act "unambiguously prohibits" the agency from charging the recreational fees in the Mount Lemmon case.

As written, the act prohibits the U. S. Forest Service from charging fees "solely for parking, undesignated parking, or picnicking along roads or trail sides," for "hiking through ... without using the facilities and services," and "for camping at undeveloped sites."

In the 15-page ruling, Judge Robert W. Gettleman wrote, "Everyone is entitled to enter national forests without paying a cent."

Moreover, in the Adventure Fee case, the agency failed to differentiate between recreational users, he noted.

"The Forest Service fails to distinguish — as the statute does — between someone who glides into a paved parking space and sits at a picnic table enjoying a feast of caviar and champagne, and someone who parks on the side of the highways, sits on a pile of gravel, and eats an old baloney sandwich while the cars whizz by," Gettleman wrote. "The agency collects the same fee from both types of picnickers. That practice violates the statute's plain text."

However, any forest visitor who uses a developed site that offers amenities such as picnic tables, permanent toilets, garbage cans and running water may be charged, the judges ruled.

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