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## **Hood River (OR) News**

### **Are NW Forest Pass Fees Illegal? Hood River attorney aids in fight**

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Ever parked for the day to catch a short hike up Herman Creek or a spur-of-the-moment pilgrimage to the Pacific Crest Trail?

Did you risk the hike without buying your U.S. Forest Service Northwest Forest Pass?

You have company. You may also have the legal right to leave your pass at home in the very near future.

Last month, Portland resident Adi Fairbank opted for the PCT and a three-day backpack - without a Northwest Forest Pass on his windshield. When he got back to the Herman Creek trailhead, he found a fine on his car and himself with a misdemeanor citation.

"I make it a habit of not buying a NW Forest Pass, since I do not believe we should have to pay to access our public lands," said Fairbank when asked if he knew he might be found in violation.

"I have concerns that accessing our own public lands can be called a crime, even a misdemeanor," he added. "I think it is unjust and more importantly, unlawful, which is why I decided to fight it in court."

Fairbank is now working to challenge his citation, received on July 23, in Federal District Court in Portland.

Coincidentally, a local attorney turns out to be Fairbank's best bet to rectify his situation.

Attorney Mary Ellen Barilotti, a Hood River resident, has been leading a fight in several Western states against the USFS's routine practice of requiring federal lands users to purchase passes for access to minimally developed areas.

"We have no problem with people being charged to have access to bathrooms, picnic areas, interpretive signs, developed parking ... Our problem is being charged to have access everywhere on USFS managed lands," said Barilotti.

According to a Feb. 9 ruling issued in the U.S. Court of Appeals for the Ninth Circuit, Barilotti and another attorney successfully argued on behalf of several plaintiffs, that the USFS is prohibited from charging fees in minimally or undeveloped federal lands under its jurisdiction.

Specifically the new ruling - tied to the Mount Lemmon federal recreation area in Arizona - states that the USFS may not charge a fee "for recreational visitors who park a car, then camp at undeveloped sites, picnic along roads or trailside, or hike through the area without using the facilities and services."

Historically, the Forest Service has been issuing and requiring fee-based passes based on their interpretation of "Federal Lands Recreation Enhancement Act" - which provided specific instances when fees might be charged on federal lands.

According to Barilotti, the new ruling negated the USFS interpretation of the Act and the application of their authority to charge in minimally developed areas under their jurisdiction.

"It was the intent of Congress to limit Forest Service authority in charging fees," said Barilotti of the Recreation Enhancement Act.

Federal use passes in Oregon are referred to as the Northwest Forest Pass and cost \$30 per year.

The initial citation issued to Fairbank carries a fine between \$75 and \$100 for first offenders. A change in pass requirements will have long-range implications for forest users and the USFS itself.

"This is not just about the cost of the pass," said Barilotti. "We argued that the Forest Service has exceeded the scope of its authority by charging fees in areas where they are precluded from doing so."

"I also don't think people have paid much attention to the fact that the USFS citations are criminal misdemeanors - with penalties attached," added Barliotti.

The Feb. 9 case involved four visitors' use of a federal recreation area in Tucson, Ariz.; however, the court issuing the opinion serves as the appellate jurisdiction for nearly all western states, including Oregon.

When asked who would be responsible for enforcing this new limitation on USFS fee requirements, Barilotti stated, "They must cease what they are doing. The Western Slope No Fee Coalition will take an active role in following up."

Barilotti also noted that the current Fairbank case, if won, would quicken the enactment of limitations on USFS charges in Oregon.

"Both I and the Western Slope group have been assisting Adi in his pro se motion to dismiss his criminal citation," she said.

Barilotti is also joining with members of the coalition to ensure the new ruling promotes restructuring within the USFS fee system. According to the organization's website, [www.westernslopenofee.org](http://www.westernslopenofee.org), the WSNFC is a nonprofit dedicated to fee-free public lands.

"I hope fighting in court results in the citation being dismissed - as an immediate effect - but in the longer term that it encourages others to not just blindly buy a NW Forest Pass every year, but to stand up for their rights to access their public lands," concluded Fairbank.