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News

Forest Service Defies Federal Court

Western Slope No-Fee Coalition

In a press release issued March 1, the US Forest Service said they will continue to charge recreation fees that were recently ruled illegal by a unanimous decision in the 9th Circuit Court of Appeals.

The Federal Lands Recreation Enhancement Act (FLREA) allows the Forest Service to charge a fee for use of developed recreation sites, but it prohibits charging those who don't actually use the developed facilities. The Forest Service has been evading the prohibitions in the FLREA by charging a fee for all uses within areas they designated as High Impact Recreation Areas, or HIRAs. There are 96 HIRAs nationwide. The agency claims that within a HIRA they can charge a fee for any use because developed facilities are provided, regardless whether they are used or not.

In a ruling that is binding in nine western states and sets a nationwide legal precedent, the 9th Circuit emphatically disagreed. Writing for the panel, Judge Robert Gettleman likened the Forest Service's HIRA argument to a restaurant patron confronted with an unexpected entry on his bill:

"If told that the fee was for ten bottles of wine that the patron's group neither ordered nor drank, the patron would rightly be outraged. He would not find much solace in a waiter's explanation that the wine cellar contained ten bottles, which the patron could have ordered if

he wished."

In their press release, the Forest Service says the ruling will have no effect on their recreation fees. They cite an internal review of HIRAs that has been underway since spring 2011, implying that the review was somehow the result of the court decision despite the contradictory timeframes. The internal review resulted in a recommendation in January to jettison the HIRA terminology, although what changes, if any, would result on the ground was uncertain. The review's findings were to go to regional citizen advisory committees, a process that could take over a year.

"That's absurd," says Western Slope No-Fee Coalition President Kitty Benzar, who contends that the 9th Circuit decision trumps any internal review process. "A federal agency does not need an advisory

committee to tell them how to comply with a federal court decision. The Forest Service does have a window of time in which to appeal, but once the decision takes effect compliance must follow immediately."

Benzar speculated that the Forest Service will try to avoid landing back in court by ceasing to issue Violation Notices for failure to pay fees. Instead, they may turn to Notices of Required Fee (NRF). Citing a 2009 internal Forest Service memo, Benzar said that NRFs "are nothing more than a request for a voluntary donation to the Forest Service" and can be ignored. They may resemble a Violation Notice, she said, but they carry no fine or other penalty.

"The agency knows it cannot convict people who have not violated any law, but they threaten prosecution anyway. It's important for visitors to the National Forests to be aware of the 9th Circuit decision, so they won't be intimidated into paying fees they do not owe," said Benzar.

According to Judge Gettleman, "Everyone is entitled to enter national forests without paying a cent."