



Hiking fee for AF Canyon will continue despite court ruling

Caleb Warnock – Daily Herald | Posted: Sunday, March 4, 2012 12:02 am

The U.S. Forest Service on Thursday said it will not remove hiking fees in American Fork Canyon after a U.S. 9th Circuit Court of Appeals ruling.

In a ruling that is binding in nine western states -- but not in Utah -- the court found unanimously two weeks ago that the U.S. Forest Service's recreation fee programs must allow citizens to park at trailheads and go for a hike without paying a fee, said Kitty Benzar, spokeswoman for the Western Slope No-Fee Coalition in an interview with the Daily Herald. The group has been fighting the fees for years in court.

On Thursday, the Forest Service broke its silence on the court ruling, issuing this statement: "Visitors to national forests should continue to expect to pay the established recreation fees that are currently in place. The U.S. Forest Service has charged user fees since 1965 and, since the mid-1990s, more than 90 percent of those fees have been used for improvements to the areas where the fees have been collected.

"The Forest Service began a review of all recreation fees two years ago, and in January made preliminary proposals on their future status. Under these proposals, 26 national forest areas will still require visitor fees, down from the current 90 areas nationwide. However, no final decision can or will be made until the proposals are reviewed by the local Recreation Resource Advisory Committees, which will be meeting throughout 2012. All Advisory Committee meetings are open to the public and include opportunities for public comment."

It was not immediately clear whether American Fork Canyon was one of the 26 listed.

"That's absurd," said Western Slope No-Fee Coalition President Kitty Benzar in a statement to the Daily Herald on Friday.

Benzar 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," she said. "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. Citing a 2009 internal Forest Service memo, Benzar said that if indeed the Forest Service begins issuing those notices, they "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," Benzar said.

Adams v. U.S. Forest Service was brought in 2008 by four hikers who visit the Coronado National Forest around Mt. Lemmon, near Tucson, Ariz.

The San Francisco Appeals Court found the U.S. Forest Service at fault for charging parking fees to people who go for a hike without using amenities such as picnic tables, trash cans and bathrooms located nearby, or who camp in dispersed, undeveloped parts of a National Forest.

Judge Robert Gettleman, writing for the unanimous three-judge panel, stated in the ruling that "everyone is entitled to enter national forests without paying a cent."

Forest access fees began in 1996 under the Fee Demo program. They include the Adventure Pass, which covers much of the four National Forests in southern California, the Northwest Forest Pass, required at hundreds of trailheads in Oregon and Washington, the Red Rocks Pass at Sedona, Ariz., American Fork Canyon and Mt. Evans Scenic Byway in Colorado, and dozens of other forest fee programs around the nation.

- **Caleb Warnock** can be reached at cwarnock heraldextra.com.