

# Judge orders U.S. Forest Service to scrap fees

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For the GPAA

Four years ago, four Tucson, Ariz. residents began a battle against Forest Service fees at Mt. Lemmon in the Coronado National Forest.

A ninth circuit Court of Appeals judge sided with those four residents on Feb. 9, finding certain Forest Service fees illegal based on the language of the Federal Lands Recreation Enhancement Act. This act prohibits the United States Forest Service, Bureau of Land Management and Bureau of Reclamation from charging patrons a fee to park or picnic along roads or trailsides; visit undeveloped backcountry; pass through federal recreation lands without using facilities; camp in parts of the forest where no facilities or services are available or use overlooks or scenic pullouts.

“The statute is abundantly clear that a standard amenity recreation fee cannot, under any circumstances, be charged for those activities,” Judge Robert W. Gettleman wrote for the unanimous three-judge panel involved in this decision.

The lawsuit charged that the U.S. Forest Service was attempting to skirt the law by designating Mt. Lemmon a High Impact Recreation Area. Even before this hearing the Forest Service was instructed to review its HIRA designations upon a recommendation of downscaling from the Washington office. This case puts nails in the coffin of HIRA-based fees and language.

“The Forest Service fails to distinguish — as the statute does — between



Judge Robert W. Gettleman has ordered the U.S. Forest Service to scrap fees. “Everyone is entitled to enter national forests without paying a red cent,” he says.

ing space and sits at a picnic table enjoying a feast of caviar and champagne, and someone who parks on the side of the highway, sits on a pile of gravel, and eats an old baloney [bolon-] sandwich while the cars whizz by. The agency collects the same fee from both types of picnickers,” Gettleman stated.

But in accordance with law, that is unacceptable. Not only is this ruling applicable to Forest Service HIRAs, but it covers all standard amenity fees charged by the BLM and Bureau of Reclamation, as well. The bottom line is that no fees can be charged for par-

tivities if patrons are not using the facilities or services available.

“Consider what would happen if a restaurant-goer inspected his bill and noticed an unexpected charge. If told that the fee was for 10 bottles of wine that the patron’s group neither ordered nor drank, the patron would rightly be outraged. He would not find much sol-

ace in a waiter’s explanation that the wine cellar contained 10 bottles, which the patron could have ordered if he wished,” Gettleman stated.

While the ruling is based on an Arizona case, it sets precedent throughout the entire Ninth Circuit, which includes

California, Nevada, Alaska and Hawaii. After the mandate, which takes

60 days, the ruling will become effective and could have subsequent impact on pass programs such as the Adventure Pass in California; the Northwest Forest Pass in Washington and Oregon and the Red Rocks Pass in Arizona. These programs currently require a pass to park at trailheads and travel through forests whether amenities or services were used.

“Everyone is entitled to enter national forests without paying a cent,” according to Gettleman.

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