

Court ruling could undercut Forest Service user fees

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A ruling in federal court in California this week could unravel the U.S. Forest Service's system of charging fees to visitors, with the judge ruling the agency has no authority to charge those who don't use restrooms, picnic tables or other developed facilities at a Forest Service site.

Senior U.S. District Judge Terry Hatter ruled Monday the fee system used in four national forests in California violates the Federal Lands Recreation Enhancement Act, a 2004 law that explicitly bars the Forest Service from charging for parking. Regardless of the intent of the fee, if a visitor uses no facilities aside from the parking lot, it's a parking fee, Hatter wrote.

"If a visitor does nothing other than park, the fee is solely for parking and is, therefore, plainly prohibited by the REA," he wrote.

Hatter's decision referenced a 2012 decision in the 9th U.S. Circuit Court of Appeals, which also found the Forest Service cannot charge visitors for parking.

Kitty Benzar, president of the group that helped bring the suit, the Western Slope No Fee Coalition, said between Monday's ruling and the 9th Circuit ruling, it's clear the Forest Service is on the wrong side of the law and needs to start retooling its fee system across the country.

"If they want to keep playing the game lawsuit by lawsuit, they can do that, but it's going to be very costly for everyone involved," she said Thursday.

Benzar said there's no obvious answer as to how the Forest Service should collect user fees to fund maintenance if not through permits posted in visitors' vehicles. She said some people have suggested creating separate parking areas at Forest Service sites, a free area for users who plan to park and hike into the woods, and a paid area for those who will be using the facilities.

"They have to find some way to allow people to access a trail without paying to park their car — it's up to them to figure out how to implement the fee, not me," she said.

Locally, the Deschutes National Forest charges visitor fees at more than 50 sites, nearly all of which include restrooms and other amenities that require regular upkeep. None of the sites in the Ochoco National Forest require user fees.

Visitors may pay \$5 per vehicle per day to access a user-fee site in the Deschutes National Forest, or \$30 a year for unlimited access to Forest Service sites in Oregon and Washington with a Northwest Forest Pass.

Tom Knappenberger, with the Portland office of the U.S. Forest Service, said the Deschutes National Forest collected just under \$610,000 in user fees last year. Maintenance and repairs consumed \$155,000, he said, visitor services such as staffing at the Lava Lands Visitors Center \$314,000, with the remainder moved into a

carry-over fund used to pay for larger capital improvements.

Knappenberger said that although the Forest Service won't comment on the California lawsuit, its effect on Forest Service operations could be short-lived. The Recreation Enhancement Act is due to expire this year, he said, and people are already looking at ways to change or clarify how user fees work.

Bob Woodward, a longtime trail builder and trails advocate in Bend, said he has a hard time imagining how the Forest Service could collect user fees from anyone if a large swath of visitors were exempted from paying.

"Short of having guard stations and gates that swing open and all that wonderful stuff, how are you going to manage that?" Woodward said. "I don't know how you manage that."

Woodward said cheating the system has become a bit of a tradition in Central Oregon, with forestgoers routinely lending a Northwest Forest Pass to friends or rolling the dice by not paying the day-use fee. Given the small number of Forest Service law enforcement officers and the enormous number of fee sites across the region, Woodward said, a two-tiered system probably would open the door to even more widespread cheating.

"It just wouldn't work, it's gotta be fee or no fee," he said.

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Ryan Brennecke / The Bulletin A pair of anglers work on launching their boat at the Slough Day-Use Area on the Deschutes River on Friday afternoon.



Ryan Brennecke / The Bulletin Dan Smith of Bend spends a portion of his lunch break walking along the Deschutes River at the Meadow Camp Day-Use Area on Friday.

