Fee Fight Fattens

A class-action lawsuit seeks to rein in what critics say are out-of-control Forest Service charges

By TIM VANDERPOOL

Glimpsed from Tucson, the Santa Catalina Mountains brush the sky with a lovely, distant serenity. But in recent years, this otherwise peaceful range has become a legal battleground, where activists clash with bureaucrats over a visitor-fees regimen never approved by Congress, but nonetheless feeding up to $800,000 annually into coffers of the Coronado National Forest.

But the terms of this high-altitude skirmish are about to change. Here's why: Whenever the current fee program has been challenged by outdoor enthusiasts who refuse to pay, federal attorneys eventually drop any charges that might directly test the program's legality, or allow for risky appeals.

That's exactly what happened in January 2007, when a federal judge saddled Tucsonan Christine Wallace with a $100 fine for refusing to pay Forest Service fees after she parked outside a developed campground on Mount Lemmon. But just before her trial, U.S. attorneys dropped charges related to another incident in which Wallace parked roadside in an undeveloped area. The latter fine had offered a meaty basis for appeal, since forest fees at unimproved sites are prohibited by law.

That's when fee foes decided to turn the tables. Rather than fighting charges for refusing to pay, fee critics have filed class-action lawsuits against the Coronado and the Arapaho National Forest near Denver. They argue that the Forest Service's fee collection has gone far beyond what's allowed under the Federal Lands Recreation Enhancement Act, or FLREA. That law specifically prohibits fees for using undeveloped camping areas and for parking alongside the road--fees routinely charged by both forests.
Citing the pending litigation, Forest Service officials have declined to comment.

Plaintiffs in the local case include Wallace, Daniel Patterson, Gaye Adams and Greg Lewis. Patterson is Southwest representative for the advocacy group Public Employees for Environmental Responsibility (and a candidate for the state House in Legislative District 29), while Adams and Lewis are members of the Arizona No Fee Coalition.

Lewis opposes most visitor fees on public preserves. "Personally, I believe the whole fee system is a private-public partnership," he says, "a move to make us become customers on our own lands."

Several U.S. senators apparently agree. Led by Max Baucus of Montana, they've introduced legislation to repeal large parts of the FLREA. The measure has been referred to the Committee on Energy and Natural Resources, and a hearing is anticipated this session.

The bill would be a long-needed change for a widely despised program. Since 1996, the Forest Service has charged for the use of campgrounds, roads and other facilities, initially under what was called the Recreation Fee Demonstration Program. It was a lucrative venture: According to a 2003 U.S. Government Accountability Office report, fee demo has earned more than $900 million since its inception.

Locally, the Santa Catalina Mountains--including Sabino Canyon--raise between $600,000 and $800,000 from fees each year. Of that, about $100,000 reportedly goes to informative and interpretive services; $300,000 goes for safety and water systems; and $75,000 goes to enforcing fee compliance.

But the program has also proven hugely unpopular, sparking organized opposition from activists and steady criticism in Congress.

In 2004, Congress reined in the original fee demo program--which allowed nearly limitless possibilities to charge visitors--and replaced it with the more restrictive FLREA. According to the new law, fees could no longer be levied for general access, or "solely for parking, undesignated parking or picnicking along roads or trail sides."

To get around this constraint, Coronado officials followed the example of other forests by designating the Santa Catalina Mountains as a "High-Impact Recreation Area," or HIRA. "They invented HIRAs to be able to continue business as usual, just as they'd done under fee demo, and not have to pay any attention to these new restrictions," says Kitty Benzar, president of the Western Slope No-Fee Coalition, based in Durango, Colo.

But the HIRA concept shows up nowhere in law, she says, and critics consider it a blatant attempt to circumvent the intent of Congress. The courts, meanwhile, have offered widely varying opinions. In September 2006, U.S. Magistrate Judge Charles Pyle dismissed charges against Wallace, noting the prohibition on fees for "road or trailside picnicking, camping at undeveloped sites, for using a trail or for trailside parking." (See "Fee Fight, Oct. 12, 2006.)

But the Forest Service appealed, and Pyle's decision was reviewed by U.S. District Judge John Roll, who ruled against Wallace in January 2007. (See "Fee Flurry," March 1, 2007.) Unlike Pyle, Roll deferred heavily to the Coronado's approach of sweeping vast, unimproved areas into the Mount Lemmon HIRA. Roll wrote that charging fees solely for areas with kiosks, potties and designated parking "would create tremendous enforcement problems for the Forest Service."
But as it happens, that HIRA is also creating problems for folks just trying to relax, such as Patterson. In December, Patterson took his wife and daughter sledding on Mount Bigelow, which is an undeveloped area in the Santa Catalinas. "But then two Forest Service employees started hassling people over the fee," he says. "Why were they trying to charge a fee in an unimproved area?"

Patterson refused to pay, and says that later this spring, rangers spent two weeks tracking him down in Tucson. "It's absurd that this is what Forest Service employees are spending their time doing."

Depending on the outcome of the class-action suit, they may not be doing it much longer. Patterson and the other plaintiffs are seeking an injunction that would specify where the Forest Service can and can't charge fees.

Still, according to Benzar, the Forest Service won't abandon its cash cow without a fight. "They're trying their hardest to keep whatever they had under fee demo, because under that program, there were no restrictions--they could charge a fee for anything and everything."

At the same time, the fee system allows individual forests to keep every dollar they collect, which she calls a powerful motive for maintaining the status quo. "If you give somebody the ability to charge the public for something that the public already owns--and they get to keep the money--that's going to be their incentive to charge everybody as much as they can, because they don't like to have to go to Congress and ask for their budget."

That's despite a Forest Service budget which she says has jumped about 25 percent in recent years. "But a lot of the money never gets out to the ranger districts," Benzar says. "It gets siphoned off in Washington for hiring more bureaucrats--including entire new divisions that do nothing but collect fees."

**Recently in Currents:**

- **Waste Not?** - Despite opposition, Davis-Monthan refuses to concede that a trash-incineration plan is dead by TIM VANDERPOOL (05-22-2008)
- **Remembering the Dead** - An old downtown Tucson cemetery is at the center of an archaeological project by DAVE DEVINE (05-22-2008)
- **Tortolita Showdown** - Neighbors and Saguaro Ranch officials fight over the fate of two roads by MARI HERRERAS (05-22-2008)
- **Currents in the archives »**

**Other related stories:**

- **Guest Commentary** - The Forest Service needs to let the people speak out at true public hearings by JENEIENE SCHAFFER (04-03-2008)
- **Vision Quest** - A forest-plan expert provides perspective by TIM VANDERPOOL (11-16-2006)
- **Fee Fight** - The Forest Service takes a hit but keeps on charging by TIM VANDERPOOL (10-12-2006)
- **Forest Service in the archives »**

**More stories by Tim Vanderpool:**

- **The Skinny** - (01-18-2007)
- Q&A with Thom Lewis - (09-23-2004)
- Sublime Mission - A history of restoration and revival at Mission San Xavier (06-09-2005)
- Tim Vanderpool in the archives »