Lawsuit Challenges Contractor’s Fees On East Verde River

Group objects to parking fees on day-use areas maintained by contractors in national forests

By Pete Aleshire

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The parking fees imposed by the U.S. Forest Service on day-use sites along the East Verde River have provoked a lawsuit by a national group seeking to roll back fees on public lands nationwide.

The Western Slope No-Fee Coalition, based in Colorado, filed the action contesting fees collected by Forest Service concessionaires on behalf of individuals who had to pay fees to park and access Forest Service land in Colorado, Oregon, Tucson and Rim Country.

The group previously won a lawsuit rolling back Forest Service fees that restricted access to public lands, rather than paying for facilities like a developed campground. Courts ruled then that the Forest Service could charge fees that covered the development and upkeep of campgrounds and other amenities, but not for the right to merely park and then use undeveloped public lands.

However, that decision left unclear whether the Forest Service could contract with private companies to run campgrounds, day-use areas, trailheads and other points of public access and allow the private company to charge fees.
The Tonto National Forest contracts with a private company to operate most of its campgrounds in Rim Country. Last year, Tonto National Forest used grant money to put in vault toilets and paved parking areas and picnic tables at four day-use sites along the East Verde River.

Many people used the day-use areas to park and fish on the East Verde River, which is stocked throughout the summer by the Arizona Game and Fish Department. People also often park at the day-use areas and hike up the creek to swim, especially at the waterfall above the Water Wheel day-use area.

That’s the once-popular undeveloped camping area near which the Water Wheel Fire started three years ago. That fire would have probably burned through both Whispering Pines and Beaver Valley, but shifts in the wind turned it back and saved both communities. The Forest Service subsequently closed the area to camping, installed the toilets and parking areas and start charging $6 to park in the day-use areas, with the concessionaire tasked with collecting the fees and maintaining the toilets and parking areas.

Cave Creek resident Stephen Sample joined in the lawsuit to protest the East Verde fees. Others joined in to challenge fees charged at Rose Canyon Lake in the Coronado National Forest near Tucson, 28 sites in the Mt. Hood National Forest and other sites in Colorado’s Pike National Forest and national forests in both Washington and Oregon.

The lawsuit asserts that the fees charged on the East Verde and elsewhere violate both previous court rulings and the terms of the Federal Lands Recreation Enhancement Act (REA), even if a concessionaire collects the money.

Congress enacted REA in 1996 to allow the Forest Service to set up demonstration projects to determine whether it could raise enough money from recreational fees at specific sites to provide for operating and maintenance.

The fees provoked a backlash, which prompted Congress to put restrictions on recreational fees for specific sites, according to a fact summary in the lawsuit filed by Durango, Colo. attorney Matt Kenna.

Congress in 2003 approved certain limits on areas for which the Forest Service could charge fees. The law said the Forest Service could not charge fees in the following circumstances:

• Solely for parking, undesignated parking or picnicking along roads or trails.
• For general access to public lands.
• For dispersed areas with low or no investment.
• For people passing through an area, whether walking, riding, driving or boating.
• For camping at undeveloped sites.
• For use of overlooks or scenic pullouts.
• For travel on roads paid for by the federal government.
• For access by licensed hunters or anglers.

The legislation also said that the law did not prevent a “third party” from charging a fee “for providing a good or service to a visitor.”

That provision lies at the heart of the lawsuit.

Kenna argued “the Forest Service may charge a fee to visitors of an ‘area’ that contains bathrooms, picnic tables and the other developed amenities listed, except that under subsection (d) it may not charge people entering that area to simply travel through it or who park and hike, picnic or camp in undeveloped areas unless those visitors actually use both facilities and services. The REA states that only the use of facilities and services may be charged for, not the mere availability of such facilities and services.”

The lawsuit also claims that the Forest Service did not follow the procedures for imposing a fee laid out in the legislation.

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