

U.S. judge's ruling could end forest user fees

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A federal magistrate's ruling could end, or scale back the scope of, the \$5 daily user fees charged on Mount Lemmon and in Sabino and Madera canyons.

The case could set a national precedent, possibly ending fees in other national forests around the country, said the chief Forest Service official for the Mount Lemmon-Sabino Canyon area.

It could also mean cutbacks in maintenance and improvements of picnic grounds and campsites, and possible closure of some facilities because the fees generate hundreds of thousands of dollars annually that are plowed into recreation areas, the forest official said.

Magistrate Charles Pyle dismissed Forest Service charges last week against a Tucsonan who got \$30 tickets twice in the same month for failing to pay fees when parking and hiking on different spots on Mount Lemmon.

Pyle ruled that the Forest Service went beyond its congressional authorization when it charged fees for parking to use a trail, for roadside or trailside picnicking, for camping outside developed campgrounds and for roadside parking in general.

For hiker Christine Wallace, a legal secretary who says she finds Mount Lemmon "a spiritual place . . . where I connect with nature," Pyle's ruling was exciting because it could ultimately end what she says is a system of double taxes for public-land users.

"I was the one who was out there on the line," Wallace said Tuesday. "I'm excited that the charges were dismissed. More than that, I'm excited at the way the judge reacted to our testimony, our motions, our exhibits. He did research on his own. He put a lot of thought into it."

The federal government hasn't decided whether to appeal the ruling. But if the ruling stands, it appears that the Forest Service will have to charge fees only for use at specific sites - not for driving up the mountain and parking at certain areas, as it does now.

Opponents of the fees both locally and nationally call Wallace's case a landmark. They say she is the first person to have legally challenged a Forest Service ticket by failing to pay the fee since a 2004 law was passed restricting the Forest Service's ability to charge such fees.

"The Forest Service has not carried out the law. . . . We've hesitated until now to use the word illegal because only courts can decide what is legal, but now I feel free to use the word illegal in regards to (the fee on) Mount Lemmon," said Kitty Benzar, co-founder of the Western Slope No Fee Coalition, based in Durango, Colo.

About 4,505 national forest sites across the country had been charging fees until the 2004 law passed, although 435 such sites had fees eliminated because of the new law's restrictions, U.S. Department of Agriculture Undersecretary Mark Rey testified to Congress last year.

The Tucson ruling could spell an end not only to the fees, but to the Forest Service's ability to repair and upgrade campgrounds, picnic areas and toilets on Mount Lemmon, said Larry Raley, district ranger for the Santa Catalina Ranger District. The fees raise \$700,000 annually for Mount Lemmon and Sabino Canyon.

Raley said that if some or all of the fees go away, some picnic areas may be closed and pay toilets could appear on the mountain, among other changes and cutbacks.

He said he doesn't think that Congress will appropriate more money to make up the difference, since those appropriations have dropped 50 percent to 75 percent over a decade.

"I don't believe it is a double tax," Raley said. "Money collected from that area goes to picnic tables, bearproof containers and all the restrooms in that area. Several campgrounds and campsites have been rebuilt."

The Forest Service will keep charging the fees as long as the legal case is unsettled, but Benzar predicted that many people won't pay from now on.

"I guess there will be a showdown," Benzar said. "They'd have a lot of nerve to keep ticketing people. It will be ugly."

This ruling brings to a head a bitter debate over the user fees that has intensified over a decade. A 1996 federal law first gave the Forest Service the right to charge fees under what was then called a demonstration program. The service started charging for Mount Lemmon in 1997, at Sabino Canyon in 2001 and at Madera Canyon in 2002.

Federal officials said they had no choice but to collect fees, because attendance at popular recreation sites had mushroomed while agency budgets were pared. Opponents said that charging people to walk on public lands was unfair when mining and timber companies and ranchers paid below-market fees to take out copper, cut timber and graze their cattle there.

Wallace, who has lived in Tucson 35 years, hikes somewhere in the Tucson area at least once a month. At first, she paid the Mount Lemmon fees. She decided to stop paying in about 2002 after being convinced by arguments of no-fee advocacy groups that the fees aren't fair, she said. She also grew to believe that the fees were part of a broader effort toward privatization of what she feels are essential government services, including schools and prisons.

After parking on the mountain 10 to 15 times without getting a ticket, she got tickets twice in September 2005 for parking near the General Hitchcock Campground and at the Marshall Gulch Picnic Area, both times so she could hike popular trails.

Rather than paying the \$30 fines for each ticket, she decided to contest them in court. She drew support from the no-fee coalition and got an attorney from Santa Barbara, Calif., who specializes in court appeals of user-fee tickets.

"I just didn't think it was right to have to pay," Wallace said.

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User fee structure:

* People who drive up Mount Lemmon must pay \$5 daily or \$20 for an annual pass, if they park at hiking trails, campgrounds or picnic areas.

They do not have to pay if they drive up and down the mountain without stopping or stop at private cabins or at Summerhaven businesses or at scenic overlooks or vista points.

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