

<http://summitcountyvoice.com/2012/02/21/forest-service-recreation-fees-take-another-legal-hit/>
Forest Service recreation fees take another legal hit

Posted on February 21, 2012 by Bob Berwyn

Ninth Circuit Court of Appeals rules that the agency can't charge people for roadside picnics, or parking and hiking in undeveloped areas



A federal court of appeals ruling makes clear that the Forest Service can't charge fees simply for parking at a trailhead and hiking.

By Summit Voice

SUMMIT COUNTY — The U.S. Forest Service can't charge recreation fees for simple access to public lands, [the Ninth Circuit Court of Appeals ruled unanimously](#) last week, rejecting the agency's bid to include undeveloped areas in the fee program.

The San Francisco-based Appeals Court found the U.S. Forest Service at fault for charging parking fees to people who go for a hike without using amenities such as picnic tables, trashcans and bathrooms located nearby, or who camp in dispersed, undeveloped parts of a National Forest.

If the ruling stands, it will be binding in nine western states and sets a nationwide legal precedent. The ruling doesn't cover Colorado, but the fee program at Mt. Evans is currently being challenged in the Tenth Circuit Court of Appeals — which does cover Colorado, and the recent ruling out of San Francisco could be a factor in that case.

Even before the ruling, the Forest Service was reviewing fee sites for compliance with the law, with a top-level panel recommending that some sites be removed from the program.

At issue is the agency's Federal Lands Recreation Enhancement Act, designed to help fill holes in the Forest Service recreation budget. Under the program, the agency can charge fees for certain areas as long as specific amenities are provided.

Initially, the Forest Service tried to include a wide range of areas under the program, for example charging fees to everyone who enters large recreation areas, even if those people don't actually use the developed sites.

Several groups, first and foremost the Western Slope No-Fee Coalition, challenged the way the agency interprets the law, and the appeals court agreed:

“The Forest Service fails to distinguish—as the statute does—between someone who glides into a paved parking 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 sandwich while the cars whizz by. The agency collects the same fee from both types of picnickers. That practice violates the statute’s plain text,” wrote Judge Robert Gettleman. “Everyone is entitled to enter national forests without paying a cent,” he said.

The case (Adams vs. U.S. Forest Service) was brought in 2008 by four hikers who visit the Coronado National Forest around Mt. Lemmon, near Tucson. A district court judge upheld the fees, giving the agency deference under the Administrative Procedures Act.

But the appeals court overturned that ruling, finding that the law doesn't require a deferential decision, according to attorney Mary Ellen Barilotti, of Hood River, Oregon, who has been involved in numerous fee-related court battles.

The court found the Forest Service at fault for charging parking fees to people who go for a hike without using amenities such as picnic tables, trashcans and bathrooms located nearby, or who camp in dispersed, undeveloped parts of a National Forest.

Forest access fees began in 1996 under the Fee Demo program. They include the Adventure Pass, which covers much of the four National Forests in southern California, the Northwest Forest Pass, required at hundreds of trailheads in Oregon and Washington, the Red Rocks Pass at Sedona, Arizona, American Fork Canyon near Provo, Utah, Mt Evans Scenic Byway in Colorado, and dozens of other forest fee programs around the nation.

In 2004, Fee Demo was replaced by the Federal Lands Recreation Enhancement Act enacted by Congress for ten years. The FLREA clearly prohibited fees solely for parking and hiking, but the U.S. Forest Service continued operating fee programs around the country that did just that.

“Millions of Americans will once again be free to go for a walk in their national forests, which they jointly own and which have been maintained by their tax dollars for over a century, without being ticketed by Forest Service staff,” said Western Slope No-Fee Coalition president Kitty Benzar.

The Forest Service is studying the ruling, and has 60 days to request a rehearing.