

René P. Voss (CA Bar No. 255758)
Email: renepvoss@gmail.com
15 Alderney Road
San Anselmo, CA 94960
Phone: (415) 446-9027
Fax: (267) 316-3414
LEAD COUNSEL

Matt Kenna (CO Bar No. 22159)
Email: matt@kenna.net
Public Interest Environmental Law
679 E. 2nd Ave., Suite 11B
Durango, CO 81301
Phone: (970) 385-6941
Fax: (970) 797-9133
Applicant *Pro Hac Vice*

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

PETER WIECHERS,) Case No.:
)
Plaintiff,)
)
)
vs.)
)
RANDY MOORE, in his official capacity as)
Regional Forester for the SW Region of the U.) Administrative Procedure Act, 5 U.S.C. §§
S. Forest Service, and the UNITED STATES) 701 *et seq.*)
FOREST SERVICE,)
)
)
Defendants.)
)
)

INTRODUCTION

1. This complaint presents an as-applied challenge to the implementation of the Federal Lands Recreation Enhancement Act (“REA”) fee program in the Sequoia National Forest, which embodies the policy and practice of the Defendant United States Forest Service (“Forest Service”). The Forest Service’s recreation fee program requires Plaintiff to purchase and display a “Southern Sierra Pass” or other fee pass to enter regions that the Forest Service has designated High Impact Recreation Areas (“HIRAs”) or Standard Amenity Fee Areas (“SAFAs”) to park, hike, boat, picnic, camp in undeveloped locations, or otherwise recreate, even when he does not use the developed facilities and services therein. Moreover, the Forest Service requires a fee pass at its Lake Isabella HIRA, Camp 9, and Kern River SAFA fee sites even though the agency has not provided all six of the requisite amenities at each site. Failure to purchase and display a required pass allows the Forest Service to impose misdemeanor criminal penalties. The REA prohibits this practice, and so the Court should set aside implementation of this fee program and refund to Plaintiff the monies he has paid Defendants under the policies and practices presented in this complaint.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question).

3. The cause of action for plaintiff's claims is the judicial review provision of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706. The challenged final agency action in this case is the implementation of the Southern Sierra Pass REA fee program in the Sequoia National Forest, and the policy contained in it, which authorizes the Forest Service to charge an amenity fee to visitors to HIRAs and SAFAs when they use no developed facilities or services, or when the requisite facilities or amenities have not been provided.

4. Venue lies in the Eastern District of California, pursuant to 28 U.S.C. § 1391(e), because the property and events giving rise to this suit occur in this district and because the Plaintiff resides within this district.

5. An actual judicable controversy exists between the parties hereto.

INTRADISTRICT VENUE

6. Similarly, because a substantial part of the events or omissions which give rise to the claims herein occurred in Kern County, assignment to the Fresno Division of this Court is proper under Civil Local Rule 120(d).

PARTIES

7. Plaintiff PETER WIECHERS is a resident of Kernville, California, and a frequent visitor to National Forest lands in the Sequoia National Forest, including the Lake Isabella HIRA, Camp 9, and the Kern River SAFAAs in the Sequoia National Forest. He has made many trips to these recreation sites before and since they were so designated. For example, he has entered the Miracle Hot Springs (“Miracle”) SAFA site solely for parking, to gain access to the Kern River, and while boating through the area, where he received a “Notice of Required Fee” from Forest Service law enforcement even though he used no facilities or services. Moreover, he has paid to enter the Lake Isabella HIRA and Camp 9 SAFA sites and has paid to enter the SAFA sites along the Kern River when he uses no facilities or services, under protest and threat of punitive action. Further, he has paid to enter these sites even though the Forest Service has not provided all six of the required amenities at each of these sites. He is injured by the challenged policy both monetarily and otherwise: when he does visit, having to pay makes his visits less enjoyable, and having to pay decreases the number of recreational visits he makes to the Sequoia National Forest.

8. Defendant RANDY MOORE is sued in his official capacity as the Regional Forester for the Pacific Southwest Region of the United States Forest Service. The Regional Forester is responsible for decisions and implementation of the recreation fee program in California. Moreover, the Regional Forester is responsible for the work and activity of all staff and personnel assigned to the National Forests in California and has authority to direct and control their actions, including the actions sought in this Complaint.

9. Defendant UNITED STATES FOREST SERVICE is a federal government agency within in the Department of Agriculture responsible for managing the National Forests, and which approved and administers the challenged HIRA and SAFA fee program.

FACTS

The Federal Lands Recreation Enhancement Act (“REA”) and its Legislative History

10. In 1996, Congress and the President passed legislation as part of a larger appropriations bill to establish the Recreational Fee Demonstration Program (often referred to as “Fee Demo”), which authorized federal land management agencies such as the Forest Service to collect fees for recreational access to federal lands and waters. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, Title I, Sec. 101(c) [title III, Sec. 315], 110 Stat. 1321. Its goal was to “demonstrate the feasibility of user-generated cost recovery for the operation and maintenance of recreation areas or sites and habitat enhancement projects on Federal lands.” *Id.* at § 315(a).

11. The response by the public was overwhelmingly negative, due to agencies such as the Forest Service charging fees for access to undeveloped public land. Resolutions were passed by many state legislatures, counties, and cities, opposing the imposition of fees under the Fee Demo program for simple access to federal public lands, on the grounds that such fees erect barriers to low-income citizens, represent double taxation for access to non-developed areas for which additional fees are not appropriate, undermine the democracy and freedom of free recreation on public lands, and represent a commoditization and commercialization of public lands, encouraging a feedback loop of fees and developments (often run by private contractors) on previously undeveloped lands.

12. Prior to the final extension of the Fee Demo program in 2003 (which had been reauthorized periodically since 1996 in annual appropriations bills), an amendment was introduced in the House Committee on Resources by Representative DeFazio of Oregon, to limit the Fee Demo program to National Parks, and eliminate it on National Forests and other lands. As stated by Representative DeFazio:

[There are] those of us who feel very strongly that levying these fees indiscriminately across the Forest Service and the BLM [Bureau of Land Management], to nondeveloped areas in particular, is of great concern. Basically, if you want to drive your car around a park and go hunting or go fishing or just walk with the kids or the dog, you have to buy a pass for nondeveloped sites, and a lot of us have strong concerns about that.

1 2004149 Cong. Rec. H7025-06 at H7033 (2003 WL 21673066) (daily ed. July 7, 2003). In
2 response to Representative DeFazio's concerns, the chairman of the committee, Representative
3 Pombo of California (who unlike Representative DeFazio was a supporter of the Fee Demo
4 program generally), stated:

5 That is something that we are going to change. There is going to be very strict
6 guidelines that come out of an authorization that goes to these agencies so that
7 this does not happen in the future. I will say I oppose doing the amendment at this
8 point in time, but I will tell the gentleman from Oregon (Mr. DEFAZIO) that in
9 the future, if we cannot authorize this program and change the way that it is being
10 run, that I would join him in eliminating the program all together

11 *Id.* at H7034.

12 13. Representative DeFazio's amendment did not pass. The following year, however,
13 in light of the continued negative public reaction to the Fee Demo program, Congress refused to
14 reauthorize it and instead passed the Federal Lands Recreation Enhancement Act ("REA"), the
15 statute at issue in this case. 16 U.S.C. §§ 6801-6814. The REA states in relevant part:

16 *Except as limited by subsection (d) of this section,* the Secretary may charge a
17 standard amenity recreation fee for Federal recreational lands and waters under
18 the jurisdiction of the Bureau of Land Management, the Bureau of Reclamation,
19 or the Forest Service, but only at the following:

- 20 (1) A National Conservation Area.
- 21 (2) A National Volcanic Monument.
- 22 (3) A destination visitor or interpretive center that provides a broad range
of interpretive services, programs, and media.
- 23 (4) An area—
 - (A) that provides significant opportunities for outdoor recreation;
 - (B) that has substantial Federal investments;
 - (C) where fees can be efficiently collected; and
 - (D) that contains all of the following amenities:
 - (i) Designated developed parking.
 - (ii) A permanent toilet facility.
 - (iii) A permanent trash receptacle.
 - (iv) Interpretive sign, exhibit, or kiosk.
 - (v) Picnic tables.
 - (vi) Security services.

24 16 U.S.C. § 6802(f) (emphasis added). The subsection (d) limitations on this fee authority
25 referred to in subsection (f) are:

26 (d) Limitations on recreation fees

- 27 (1) Prohibition on fees for certain activities or services
The Secretary shall not charge any standard amenity recreation fee or
expanded amenity recreation fee for Federal recreational lands and
waters administered by the Bureau of Land Management, the Forest

1 Service, or the Bureau of Reclamation under this chapter for any of
2 the following:

- 3 (A) Solely for parking, undesignated parking, or picnicking along
4 roads or trail sides.
- 5 (B) For general access unless specifically authorized under this
6 section.
- 7 (C) For dispersed areas with low or no investment unless
8 specifically authorized under this section.
- 9 (D) For persons who are driving through, walking through,
10 boating through, horseback riding through, or hiking through
11 Federal recreational lands and waters without using the
12 facilities and services.
- 13 (E) For camping at undeveloped sites that do not provide a
14 minimum number of facilities and services as described in
15 subsection (g)(2)(A) of this section.
- 16 (F) For use of overlooks or scenic pullouts.
- 17 (G) For travel by private, noncommercial vehicle over any
18 national parkway or any road or highway established as a part
19 of the Federal-aid System, as defined in section 101 of Title
20 23, which is commonly used by the public as a means of
21 travel between two places either or both of which are outside
22 any unit or area at which recreation fees are charged under
23 this chapter.
- 24 (H) For travel by private, noncommercial vehicle, boat, or aircraft
25 over any road or highway, waterway, or airway to any land in
26 which such person has any property right if such land is
27 within any unit or area at which recreation fees are charged
28 under this chapter.
- (I) For any person who has a right of access for hunting or fishing
privileges under a specific provision of law or treaty.
- (J) For any person who is engaged in the conduct of official
Federal, State, Tribal, or local government business.
- (K) For special attention or extra services necessary to meet the
needs of the disabled.

16 U.S.C. § 6802(d). Thus, while the Forest Service is authorized to charge visitors an “amenity
17 fee” for use of developed facilities and services, it may not simply charge an “entrance fee” to an
18 area when visitors do not use those developed facilities and services. *See also* 16 U.S.C. §
19 6802(e)(2) (“Prohibited sites-The Secretary shall not charge an entrance fee for Federal
20 recreational lands and waters managed by the Bureau of Land Management, the Bureau of
21 Reclamation, or the Forest Service.”).

22 14. Accordingly, the Forest Service may charge a fee to visitors of an “area” that
23 contains permanent bathrooms, picnic tables, interpretive signs, and the other developed
24 amenities listed in subsection (f)(4), except that under subsection (d) it may not charge people
25 entering that area to simply travel through it, boat through it, or who park and hike, picnic or
26

1 camp in undeveloped areas, unless those visitors actually use both facilities and services as
2 described in 16 U.S.C. § 6802(d)(1). The REA states that the agencies may charge only for the
3 use of facilities and services, not the mere availability of such facilities and services. *Id.*
4 Likewise, the agency may not charge visitors for general access, for boating through an area,
5 who visit only scenic overlooks, or other users listed in subsection (d), such as people on official
6 government business or members of Indian tribes with tribal hunting rights. *Id.*

7 15. As stated in the House committee report authored by Representative Pombo, the
8 final REA, as amended,

9 clarified where a fee may and may not be charged while also establishing types of
10 fees. This section was overly prescriptive to alleviate concerns of those who no
11 longer trust certain federal land management agencies with the recreation fee
12 authority. For example, the amendment made clear that the USFS [Forest
13 Service] and the BLM [Bureau of Land Management] will not be permitted to
14 charge solely for parking, scenic pullouts, and other non-developed areas while
15 the NPS [National Park Service] and the FWS [U.S. Fish and Wildlife Service]
16 may continue to charge an entrance fee.

17 H.R. Rep. 108-790(I), 108th Cong., 2nd Sess. 2004 (Nov. 19, 2004), 2004 WL 2920863 at *18.
18 So while supporters in Congress of the predecessor Fee Demo program may have viewed the
19 new REA restrictions as “overly prescriptive,” they nonetheless intentionally passed them into
20 law, acknowledging that some members of Congress at least viewed them as necessary to correct
21 the practice under the Fee Demo program by the Forest Service and other agencies of
22 “charg[ing] solely for parking, scenic pullouts, and other non-developed areas.” *Id.*

23 The Sequoia National Forest HIRA, SAFAs, and the Southern Sierra Pass

24 16. Under Fee Demo, the Sequoia National Forest required payment of a recreation
25 fee to enter into 112 acres of federal land around Lake Isabella , including areas where no
26 developed facilities are provided. The requirement to buy a pass for general access and entrance
27 to these areas was frequently cited by Fee Demo opponents as an example of overreach by the
28 agency. It was an example of what Representative DeFazio meant when he said: “[There are]
those of us who feel very strongly that levying these fees indiscriminately across the Forest
Service and the BLM [Bureau of Land Management], to nondeveloped areas in particular, is of
great concern.” 2004149 Cong. Rec. H7025-06 at H7033 (2003 WL 21673066) (daily ed. July 7,

1 2003). Thus the Fee Demo program implemented in the Sequoia National Forest was an
2 example of exactly the type of fee that the REA was enacted by Congress to eliminate.

3 17. In April of 2005, following enactment of the REA, the Forest Service issued
4 “Interim Implementation Guidelines” to implement the REA on National Forests. *See* Forest
5 Service REA Interim Implementation Guidelines (“Interim Guidelines”). Among other things,
6 these guidelines created the authority to charge a “Standard Amenity Fee” within High Impact
7 Recreation Areas (“HIRAs”), a designation not specified in the REA. The Interim Guidelines
8 define a HIRA as

9 clearly delineated, contiguous area with specific, tightly defined boundaries and
10 clearly defined access points (such that visitors can easily identify the fee area
11 boundaries on the ground or on a map/sign); that supports or sustains concentrated
12 recreation use; and that provides opportunities for outdoor recreation that are
directly associated with a natural or cultural feature, place, or activity (i.e.,
waterway, canyon, travel corridor, geographic attraction - the recreation
attraction).

13 Interim Guidelines at 9.

14 18. These Interim Guidelines also provided definitions for most of the amenities the
15 REA requires in order for the Forest Service to charge a recreation fee, including:

16 **Designated Developed Parking** – A parking area that has a graded surface, clear
delineation of the boundaries, and natural or constructed surfacing.

17 ...
18 **Interpretive Sign, Exhibit or Kiosk** – Each site or area must contain at least one
public display designed to develop a visitor’s interest, enjoyment, and
understanding of the natural or cultural environment. This requirement is in
addition to facilities needed to inform visitors of recreation opportunities,
facilities, and applicable regulations and restrictions. Messages should be relevant
to the setting and the visitor – generic posters and safety information are not
adequate. The design, content, and medium should be of professional quality. The
information may be incorporated into a bulletin board or presented through other
signing or media. In general, single displays should be a minimum of roughly 25
x 30 inches. Consideration should be given to bilingual and accessibility needs.

23 ...
24 **Permanent Toilet Facility** – A toilet building with a floor, walls, and roof that is
permanently affixed or that is available (year after year) in locations that serve
visitors during the primary use season but are moved during the non-use season
because of environmental or weather concerns. These facilities are located as a
convenience to the user and efficiency of operation and maintenance.

26 ...
27 **Permanent Trash Receptacle** – A garbage container of durable design and
construction that is permanently available (year after year) in locations that serve
visitors during the primary use season, but may be moved during the non-use
season because of environmental or weather concerns. These facilities are located
as a convenience to the user and efficiency of operation and maintenance.

1 ...
2 **Security Services** – Services provided by qualified agency personnel or officers
3 (cooperative law enforcement personnel, hosts, volunteers, etc.) that occur on a
4 frequent and routine basis at the site or area. The level of security services is
5 commensurate with the use levels.

6 Interim Guidelines at 22-23 (emphasis in original; providing no definition for “Picnic Tables”).

7 19. The Sequoia National Forest, which had required a fee for entrance under the Fee
8 Demo program, re-designated the entire area a Standard Amenity Fee Area, and in doing so
9 established the Lake Isabella HIRA in exactly the same 112-acre footprint as the former Fee
10 Demo area. Within this HIRA, the Forest Service requires a recreation user to purchase and
11 display a Southern Sierra Pass or other fee pass on their vehicle, regardless of whether that
12 person uses amenities in the HIRA, simply because amenities are present and available
13 somewhere within the larger HIRA.

14 20. While the Forest Service asserts that they changed their Fee Demo program at
15 Lake Isabella to conform to the Interim Guidelines and the REA, the REA fee program still
16 requires fees for essentially the same areas as the earlier Fee Demo program. The Sequoia
17 National Forest simply converted the three Fee Demo areas into the Lake Isabella HIRA so that
18 the requirement to display a pass continues to function as a *de facto* entrance fee. Moreover, the
19 Forest Service has added the Kern River SAFA fee sites without following the REA’s process
20 for establishing new fee sites, by converting these sites over from concessionaire fee sites to
21 Forest Service management without any public process.

22 21. The Lake Isabella HIRA is made up of the Auxiliary Dam, South Fork, and Old
23 Isabella recreation sites. All three sites provide the visitor with shoreline access for recreation on
24 Lake Isabella, and all three sites require the Southern Sierra Pass or other fee pass to enter the
25 area. Camp 9 also provides shoreline access for recreation on Lake Isabella and also requires the
26 Southern Sierra Pass or other fee pass to enter the area.

27 22. In the Camp 9 day use area, the Forest Service has failed to provide all six of the
28 requisite amenities. The site has no picnic tables or interpretive signs, exhibits, or kiosks. The
29 only signs at the site are to inform visitors of facilities, applicable regulations or restrictions, and
30

1 that a fee is required to use the site. There are no public displays designed to develop a visitor's
2 interest, enjoyment, and understanding of the natural or cultural environment.

3 23. In the Auxiliary Dam site, the Forest Service has failed to provide all six of the
4 requisite amenities. The site has no interpretive signs, exhibits, or kiosks. The only signs at the
5 site are to inform visitors of facilities, applicable regulations or restrictions, and that a fee is
6 required to use the site. There are no public displays designed to develop a visitor's interest,
7 enjoyment, and understanding of the natural or cultural environment.

8 24. In the Old Isabella site, the Forest Service has failed to provide all six of the
9 requisite amenities. The site has no picnic tables or interpretive signs, exhibits, or kiosks. The
10 only signs at the site are to inform visitors of facilities, applicable regulations or restrictions, and
11 that a fee is required to use the site. There are no public displays designed to develop a visitor's
12 interest, enjoyment, and understanding of the natural or cultural environment.

13 25. In the South Fork site, the Forest Service has failed to provide all six of the
14 requisite amenities. The site has no designated developed parking or interpretive signs, exhibits,
15 or kiosks. The only designated parking is for "Boat Launch Parking Only" and "Marina
16 Parking"; however, those parking areas are located in an ungraded sloping field and are not
17 clearly delineated. The only signs at the site are to inform visitors of facilities, applicable
18 regulations or restrictions, and that a fee is required to use the site. There are no public displays
19 designed to develop a visitor's interest, enjoyment, and understanding of the natural or cultural
20 environment.

21 26. The Forest Service also maintains several SAFA sites along the Kern River
22 downstream from Lake Isabella, including Miracle, Upper Rich Bar, Lower Rich Bar, and Live
23 Oak picnic areas, which all provide access to the Kern River for boaters and other recreational
24 users. The Forest Service requires the Southern Sierra Pass or other fee pass to enter these areas.

25 27. In the Miracle picnic site, the Forest Service has failed to provide all six of the
26 requisite amenities. The site has no permanent toilet facilities or interpretive signs, exhibits, or
27 kiosks. A temporary toilet was located there in the summer of 2012, although it was no longer
28 there in January 2013, and can only be described as a "porta-pottie" or "port-o-let" and not a

1 permanent building. The only signs at the site are there to inform visitors of facilities, applicable
2 warnings/regulations or restrictions, and a map showing the rapids downriver. There are no
3 public displays designed to develop a visitor's interest, enjoyment, and understanding of the
4 natural or cultural environment.

5 28. In the Upper Rich Bar picnic site, the Forest Service has failed to provide all six
6 of the requisite amenities. The site has no interpretive signs, exhibits, or kiosks. The only signs
7 at the site are to inform visitors of facilities, applicable regulations or restrictions, and that a fee
8 is required to use the site. There are no public displays designed to develop a visitor's interest,
9 enjoyment, and understanding of the natural or cultural environment.

10 29. In the Lower Rich Bar picnic site, the Forest Service has failed to provide all six
11 of the requisite amenities. The site has no interpretive signs, exhibits, or kiosks. The only signs
12 at the site are to inform visitors of facilities, applicable regulations or restrictions, and that a fee
13 is required to use the site. There are no public displays designed to develop a visitor's interest,
14 enjoyment, and understanding of the natural or cultural environment.

15 30. In the Live Oak picnic site, the Forest Service has failed to provide all six of the
16 requisite amenities. The site has no interpretive signs, exhibits, or kiosks. The only signs at the
17 site are to inform visitors of facilities, applicable regulations or restrictions, and that a fee is
18 required to use the site. There are no public displays designed to develop a visitor's interest,
19 enjoyment, and understanding of the natural or cultural environment.

20 31. Other plaintiffs have challenged HIRA fees imposed on other national forests in
21 Federal Courts in both civil and criminal cases. *See e.g., United States v Wallace*, 450 F. Supp.
22 2d 1080 (D. Ariz. 2006), *vacated by* 476 F. Supp. 2d 1129 (D. Ariz. 2007); *United States v.*
23 *Smith*, 740 F. Supp. 2d 1111 (D. Ariz. 2010); *Scherer v. U.S. Forest Service*, No. 1:08-CV-00917
24 (D. Colo. July 22, 2010), *affirmed by* 653 F.3d 1241 (10th Cir. 2011); *Adams v. U.S. Forest*
25 *Service*, No. 4:08-CV-00283 (D. Ariz. Mar. 9, 2010), *reversed and remanded by* 671 F.3d 1138
26 (9th Cir. 2012). Congress also questioned the use of HIRA fees in committee hearings in the
27 Senate in 2005 and the House in 2008. Under this continued critical scrutiny, the Forest Service
28 undertook an internal review of all HIRAs in 2011. This review resulted in a recommendation

1 from the Forest Service's Washington Office to remove the HIRA designation from the three
2 Lake Isabella HIRA sites and limit fees there to standalone designated Expanded Amenity Fee
3 Sites. The Forest Service website for the Sequoia National Forest continues to refer to the Lake
4 Isabella HIRA where the Southern Sierra Pass is required and remains the same as before the
5 recommendation. The review made no recommendation about the Camp 9 SAFA fee site or the
6 other SAFA fee sites on the Kern River.

7 32. The Sequoia National Forest continues to maintain its program and fee structure,
8 which requires forest users who park or recreate in the Lake Isabella HIRA, Camp 9, or the Kern
9 River SAFAs to purchase a daily, monthly, or yearly Southern Sierra Pass. Alternatively,
10 anyone parking or recreating in these sites can comply with the fee requirement by displaying
11 other fee passes, including an *America the Beautiful Interagency Pass* (a yearly pass costing
12 \$80), an *Interagency Senior Pass* (formerly the *Golden Age Passport*, issued as a lifetime pass to
13 anyone 62 years or older for \$10), or an *Interagency Access Pass* (formerly known as the *Golden
14 Access Passport*, issued for free to persons with permanent disabilities).

15 33. Parking anywhere in the Lake Isabella HIRA, Camp 9, or Kern River SAFAs for
16 any reason for an extended period without displaying the requisite pass has potential criminal
17 consequences: "Failure to pay the required fee may subject you to criminal enforcement under
18 16 U.S.C. 6811 and 36 C.F.R. 261.17." *See* Notice of Required Fee, issued by Sequoia National
19 Forest law enforcement to Plaintiff.

20 34. But the Ninth Circuit Court of Appeals has ruled that this policy and practice
21 violates the REA:

22 The Forest Service is prohibited from charging an amenity fee "[s]olely for
23 parking." 16 U.S.C. § 6802(d)(1)(A).

24 * * *

25 Moreover, the REA clearly contemplates that individuals can go to a place
26 offering facilities and services without using the facilities and services and
27 without paying a fee.... The statute thus distinguishes between merely recreating
28 in an area and actually using an area's amenities.

 * * *

It is equally clear that the REA prohibits the Forest Service from charging
standard amenity recreation fees for each of several activities in which plaintiff

1 participate after they park: hiking without using facilities and services, picnicking
2 on a road or trailside

3 *Adams v. U.S. Forest Service*, 671 F.3d 1138, 1144-45 (9th Cir. 2012).

4 35. Plaintiff is an individual who enters the HIRA or SAFAAs in the Sequoia National
5 Forest for boating, to gain general access, and otherwise recreate in undeveloped portions of the
6 Forest and/or to access the lake, the Kern River, and other undeveloped lands beyond the HIRA
7 or SAFAAs, without using any developed amenities. He has paid the recreation fee to enter the
8 HIRA and SAFAAs to engage in these activities under protest.

9 **FIRST CLAIM FOR RELIEF**

10 36. The paragraphs above are incorporated herein by reference.

11 37. As implemented, the Sequoia National Forest and Southern Sierra Pass REA fee
12 program has charged Plaintiff and other visitors an amenity fee to enter the Lake Isabella HIRA,
13 Camp 9, and Kern River SAFA sites without providing all six of the required amenities listed in
14 the REA, in violation of 16 U.S.C. § 6802(f)(4)(D). Accordingly, the Forest Service has taken
15 final agency actions that are arbitrary, capricious, and otherwise not in accordance with law,
16 within the meaning of the Administrative Procedure Act. 5 U.S.C. § 706(2). As such, the Forest
17 Service's actions should be set aside under the judicial review provision of the APA, 5 U.S.C. §
18 701 *et seq.*

19 **SECOND CLAIM FOR RELIEF**

20 38. The paragraphs above are incorporated herein by reference.

21 39. As implemented, the Sequoia National Forest and the Southern Sierra Pass REA
22 fee program authorizes the Forest Service to charge an amenity fee to visitors to the Lake
23 Isabella HIRA, Camp 9, and Kern River SAFA sites, regardless of whether they use the
24 developed facilities and services; and the agency has issued a notice of required fee and has
25 charged Plaintiff a fee for entering these sites to engage in recreation even though he has not
26 used the developed facilities and services, in violation of the REA, 16 U.S.C. § 6802(d)(1).
27 Accordingly, the Forest Service has taken final agency actions that are arbitrary, capricious, and
28 otherwise not in accordance with law, within the meaning of the Administrative Procedure Act.

1 5 U.S.C. § 706(2). As such, the Forest Service's actions should be set aside under the judicial
2 review provision of the APA, 5 U.S.C. § 701 *et seq.*

3 **REQUEST FOR RELIEF**

4 40. For these reasons, plaintiff request that the Court:

- 5 a) Declare that the Sequoia National Forest and Southern Sierra Pass REA fee program and
its HIRA and SAFAs, violates the REA;
- 6 b) Set aside the designation of the HIRA and SAFAs;
- 7 c) Declare that, in the event the Court upholds the HIRA and SAFAs, that the policy and
practice embodied in implementing the Sequoia National Forest and Southern Sierra Pass
8 REA fee program, which charges visitors and the Plaintiff an amenity fee to enter the
9 HIRA or SAFAs without providing all six of the required amenities at the HIRA and
10 SAFAs, violates the REA;
- 11 d) Set aside the implementation of that policy and practice;
- 12 e) Declare that the policy and practice embodied in implementing the Sequoia National
Forest and Southern Sierra Pass REA fee program, which authorizes the Forest Service to
13 charge visitors and the Plaintiff an amenity fee to enter the HIRA or SAFAs without use
14 of the developed facilities and services of the HIRA or SAFAs, violates the REA;
- 15 f) Set aside the implementation of that policy and practice;
- 16 g) Order the Forest Service to refund Plaintiff monies he has paid under the policy;
- 17 h) Award Plaintiff his costs of litigation, including reasonable attorneys' fees under the
Equal Access to Justice Act, 28 U.S.C. § 2412; and
- 18 i) Provide such other relief as the Court deems just and proper.

23 Respectfully submitted this 11th day of February, 2012.

24 
25

26 René Voss

27 Matt Kenna – Applicant Pro Hac Vice

28 Attorneys for Plaintiff

CIVIL COVER SHEET

Case 1:13-cv-00080 Document 1-1 Filed 02/12/13 Page 1 of 1

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Wiechers, Peter

(b) County of Residence of First Listed Plaintiff Kern County, Cal.

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

René P. Voss, Attorney at Law, 15 Alderney Rd, San Anselmo, CA 94960;
415-446-9027;
Matt Kenna, 679 E. 2nd Ave., Public Interest Environmental Law
Suite 11B, Durango, CO 81301, (970) 385-6941 (Applicant Pro Hac Vice)

DEFENDANTS

Moore, Randy; United States Forest Service

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|---|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/ Disabilities Employment <input type="checkbox"/> 446 Amer. w/ Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
				IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Administrative Procedure Act, 5 U.S.C. §§ 701-706; Federal Lands Recreation Enhancement Act, 16 U.S.C. §§ 6801-6814

Brief description of cause:

Forest Service agency actions in violation of the Federal Lands Recreation Enhancement Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.C.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S)**

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

02/12/2013

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE