

# WESTERN SLOPE NO-FEE COALITION

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## CLASS ACTION LAWSUITS FILED AGAINST FOREST SERVICE IN ARIZONA AND COLORADO

### Forest Users Challenge Fees At Mt Lemmon and Mt Evans

Two class action suits that were filed this week in Tucson and Denver allege that the U.S. Forest Service is exceeding the scope of its legal authority by charging fees that violate several provisions of the Federal Lands Recreation Enhancement Act (FLREA). The fee programs are at Mt Lemmon on the Coronado National Forest near Tucson, and Mt Evans on the Arapaho National Forest west of Denver.



*A photographer captures the scene from an overlook on Mt Evans west of Denver. A \$10 fee to use the overlooks is the subject of a federal lawsuit.*

The FLREA, known to its opponents as the Recreation Access Tax, or RAT, prohibits the Forest Service from charging fees for parking, undeveloped camping, or scenic overlooks. The law also forbids fees for hiking, horseback riding, or driving through National Forest land without using any facilities or services.

In the Tucson case, four plaintiffs are challenging the designation a of one-half mile strip on either side of the 28-mile Catalina Highway to the summit of Mt Lemmon as a type of fee area called a High Impact Recreation Area, or HIRA. The term HIRA does not appear in the fee law, only in Forest Service policy. Along the highway are some developed campgrounds and picnic areas. But there are also undeveloped trailheads, and numerous trails leading into the backcountry, including the 56,933-acre Pusch Ridge Wilderness,

that are devoid of any amenities. There are also at least three undeveloped primitive camping areas.

In spite of the prohibitions in the law against fees for parking, hiking, and undeveloped camping, within the Mt Lemmon HIRA the Coronado National Forest charges a \$5 fee for all activities except stopping at developed scenic overlooks or non-stop travel to private property. The fee applies even to those who merely park at an undeveloped trailhead and hike into the backcountry.

According to plaintiff Daniel Patterson, "The Coronado National Forest is unethically violating the intent and language of the law by expanding fees to undeveloped places, including Mt Bigelow where there are no improvements and fees previously were never charged. Working families should not be taxed extra for visiting their wild public lands with no infrastructure. Congress wanted to end these bureaucratic abuses by passing the Federal Lands Recreation Enhancement Act, but instead the fee shakedown has become worse. The Mt Lemmon HIRA is a rip-off that the courts and congress should stop immediately."

In the Mt Evans case, the Arapaho National Forest requires a \$10 HIRA fee to stop anywhere along Colorado State Highway 5, including trailheads into the Mt Evans Wilderness and the numerous scenic overlooks adjacent to the road. Only non-stop travel is allowed for free, despite the language in the law specifically prohibiting fees for parking and overlooks.

The Colorado suit also charges that the Forest Service is exceeding its authority by enforcing federal law on property owned by the City of Denver at Summit Lake Park. The park, located partway up the mountain, is owned by Denver although surrounded by National Forest. The Arapaho National Forest enforces their HIRA fee within the park even though it is not federal land.

In addition, both cases charge the Forest Service with violating the plaintiffs' First and Fifth Amendment rights.

The plaintiffs in the Arizona suit are ecologist Daniel Patterson, AZ No-Fee activists Gaye Adams and Greg Lewis, and Christine Wallace, who was convicted and fined \$100 in September for failure to pay \$5 to park and go for a hike. In the Wallace case, the government dropped one of two charges a few days before the trial. The charge that was dropped was the one that would have created the basis for an appeal.



*Sign along the Mt Lemmon Highway near Tucson. A suit filed in federal court challenges the legality of the fee.*

The Colorado plaintiffs are hiker and outdoorsman David Scherer and Elderlaw attorney John Licht. Both cases are being handled by attorney Mary Ellen Barilotti, who defended Wallace in her criminal case.

Barilotti said the class action complaints, which will be heard in civil court, are the only avenue for obtaining a definitive ruling on whether the Forest Service has overstepped its authority. "In every case where a criminal defendant has pleaded not guilty and gone to trial, the charges that are legally questionable have been dropped, often at the last minute," she said. "That keeps the legal issues from being fully explored and allows the Forest Service to continue their fee programs without challenge."

The plaintiffs are suing as representatives of all members of the public who may have been charged fees illegally. Additional plaintiffs can be added to the cases, and Barilotti encouraged those who may want to participate to speak up. "One of the remedies we're seeking is the return of all money that has been improperly paid. If you visit these fee areas, save your receipts. You might eventually get a refund."

Western Slope No-Fee Coalition President Kitty Benzar applauded the plaintiffs. "It's not quick, easy, or cheap to stand up for your rights in court," she said. "But this is the only way to establish once and for all that Congress never intended for every person who visits public lands to have to pay. The Forest Service is not above the law, and I hope these cases will succeed."