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Fight over public lands fee spills into the courts

Lawyer says outcome probably won't affect Aspen's Maroon Bells

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ASPEN — Foes of fees on public lands, such as at the Maroon Bells, have taken their battle to court.

Two class-action lawsuits were filed earlier this month against the U.S. Forest Service over fees it charges at Mount Evans, in Colorado, and Mount Lemmon, in Arizona.

Individual outdoor lovers are named as plaintiffs, but their efforts are in conjunction with organizations fighting the fees. The Western Slope No-Fee Coalition, based in Durango, Colo., is among the backers of the lawsuits, said Kitty Benzar, the organization's president.

The lawsuits claim the Forest Service is violating the Federal Lands Recreation Enhancement Act, which gives the agency permission to charge fees for specific services or amenities.

Mount Evans, near Idaho Springs, is one of Colorado's peaks that exceeds 14,000 feet in elevation. Mount Evans is unique because it has a paved road to the top, so it is a popular destination for motorists and road bikers.

The Forest Service declared Mount Evans a High Impact Recreation Area and charges a fee for anyone who stops along the state highway that climbs to the top. Motorists who pull over at scenic overlooks and people who drive and park at trailheads then go hike are supposed to pay the \$10 fee. Cyclists and hikers pay a smaller fee. Only people who travel to the top and turn around without stopping anywhere along the route are exempt from the fee.

Prosecution for not paying

Federal legislation prohibits fees for parking and using overlooks, the lawsuit alleges. The opponents also contend the Forest Service is illegally charging a fee to people who want to use a city of Denver park at Summit Lake, half way up Mount Evans.

People who refuse to pay and stop along the route are subject to prosecution and a fine. The Forest Service's "threat of criminal prosecution has a chilling effect on Plaintiff's right to travel on his use of the forest for walking, riding a bike, or simply enjoying the view," the lawsuit said.

"To avoid the threat of criminal prosecution, Plaintiffs and others have paid fees to the Service that it was not entitled, by law, to charge."

The attorney for the fee foes is Mary Ellen Barilotti of Hood River, Ore. Barilotti said the issue simply boils down to the need of the Forest Service to follow the law.

"It's the issue of accountability," she said.

If her side prevails in the lawsuit, it could have implications for other sites where the Forest Service charges a fee. There are more than 100 sites in the country where the Forest Service charges a fee, according to Benzar.

However, Barilotti said she doesn't believe it would affect the Maroon Bells, the popular recreation area south of Aspen.

Maroon Bells case is different

The Forest Service can legitimately charge a fee when certain criteria are met. A fee is authorized when an outdoor recreation area provides "all" of the following amenities: designated parking, a permanent toilet, permanent trash collection, interpretative signs or a kiosk, picnic tables and security services, such as a ranger on duty.

Barilotti said the difference between Mount Evans and the Maroon Bells is the number of services offered. The Forest Service provides all the services required by law to charge a fee at Maroon Lake and not at Mount Evans. The Forest Service charges a fee and limits vehicular traffic on Maroon Creek Road between 9 a.m. and 5 p.m. during summers. Cyclists travel free.

The Maroon Bells area received about 200,000 visits last summer, according to Martha Moran, recreation staff director for the Aspen-Sopris Ranger District. About \$180,000 was collected in visitors' fees and outfitter and guide fees last year, she said.

The White River National Forest keeps most of that money rather than send it back to the U.S. Treasury. The stipulation is the funds must be spent on facilities in the general area where they are collected.

The funds are vital to paying staff at the Bells for the summer and for special projects, such as campground improvements, Moran said. Without the funds, the Maroon Bells facilities would siphon most of the recreation funding available to the district, local agency officials have claimed

Moran welcomed news that the Mount Evans lawsuit wouldn't impact the Maroon Bells fee.

That doesn't mean the fee will go unchallenged. Western Slope No-Fee Coalition's Benzar said fee foes continue to mount legislative challenges. A bill was introduced in the U.S. Senate to repeal fees. It is unknown if there will be committee hearings before Congress' summer recess.

The \$10 fee at Maroon Bells is one of the featured sites on the No-Fee Coalition's website.

Benzar said she and a lot of other people oppose the idea that a person has to pay to take a walk in the woods.

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BACK 