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## Driving up Mount Evans should be free. So why do so many pay a fee?

By Patricia Calhoun

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The highway up Mount Evans opened at 8 a.m. last Friday, after a Colorado Department of Transportation crew had shoveled the last snow off the highest road in North

America. Over the next three months, tens of thousands of cars will make the trip up State Highway 5, which starts at Echo Lake and goes from 10,500 feet to 14,230 feet in just fourteen miles. The road stops just 34 feet short of the summit — which makes Mount Evans the easiest fourteener you'll ever climb. But if you want to get out of your car to conquer this peak, you'll have to pay. In fact, if you stop your car anywhere on the road — to take a picture,

to look at the scenery, never mind to use a bathroom — you'll have to pay.

A handful of Coloradans would like to make the U.S. Forest Service pay for flagrantly flouting the law that regulates what fees can be charged on public land. But while the snow is melting on Mount Evans, their case seems frozen in court.

Back in 1997, under the new federal Recreational Fee Demonstration Act, the Forest Service put an entrance station at the start of the highway, at Echo Lake, and began charging a \$10 access fee to enter Arapaho National Forest, which abuts the state highway. But charging access to public land proved so unpopular — not just in Colorado, but across the country — that Congress repealed Fee Demo in 2004 and replaced it with the Federal Lands Recreation Enhancement Act, which prohibits the Forest Service and other agencies from charging entrance fees at all and only allows an amenity fee if visitors actually use amenities — improved campgrounds, bathrooms, visitor centers. Under this law, the entrance fee at the start of Highway 5 should have been discontinued in all but very specific cases. But at Mount Evans, the Forest Service interprets an amenity very strictly: If you park, you pay the \$10 fee.

"As long as you drive to the top and back without stopping, you don't need to pay," says John Bustos, the public information officer for this region of the Forest Service. What if you pull over onto one of the state-maintained scenic overlooks? "As long as you drive to the top and back without stopping, you don't need to pay," he repeats. How about if you pause at the side of the road to take a picture? "As long as you drive to the top and back without stopping, you don't need to pay."

But visitors complained that the Forest Service staffers in the information booth (the word "entrance" had been eliminated) didn't explain even that much, instead implying that in order to use the road, every vehicle had to have a ten-buck pass, whether or not the driver planned to stop. After hearing enough of those complaints, in 2007 the Colorado Department of Transportation, which owns and



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maintains the road (but collects none of the fees), got the Forest Service to put up a sign that states "Parked vehicles must display a valid recreation pass next 15 miles." It would have clarified things had the sign instead said "Only vehicles that park must display a valid recreation pass." It would have been clearer still if the sign had not been placed a good fifty feet beyond the information booth, which blocks the view of the sign.

Still, the fee was just \$10, and "Who wants to fight government, especially over \$10?" asks David Scherer.

Well, Scherer, for starters. A regular visitor to Mount Evans and an active member of the Western Slope No-Fee Coalition ([www.westernsloopenofee.org](http://www.westernsloopenofee.org)) since 2001, he thought the confusing signage and inconsistent staff instructions were just the start of a mountainous injustice at Mount Evans. After studying the subject for a year, he got a break in February 2008, when he found the Forest Service plans for a toilet at "the Mount Evans overlook" — and overlooks are specifically exempt from fees by the FLREA. "We need to take the Forest Service to court," he remembers thinking, "so we can show our evidence to the court."

And so Scherer filed suit in U.S. District Court, charging that through forest supervisor Glenn Casamassa, the Forest Service had "exceeded the scope of its legislative authority in implementing the Federal Lands Recreation Enhancement Act" at Mount Evans Recreation Area. After all, according to the language of the FLREA, "The Secretary shall not charge any standard amenity fee for Federal recreation lands and waters administered by the Bureau of Land Management, the Forest Service, or the Bureau of Reclamation under this act for any of the following:

*solely for parking, undesignated parking, or picnicking along roads or trailsides*

*for general access unless specifically authorized under this section*

*for dispersed areas with low or no investment unless specifically authorized under this section*

*for persons who are driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using the facilities and services.*

*For camping at undeveloped sites that do not provide a minimum number of facilities and services...*

*For use of overlooks or scenic pullouts.*

There are scenic pullouts all along the highway, and in addition to that scenic toilet, the very summit is billed as an overlook, with a viewing platform and signs that boast "I Can See for Miles." And while only a few spots along the road have actual facilities, the views along the way are an endless invitation to picnic. Or at least park.

There are other sticky issues, too, Scherer's lawsuit charges. The area includes two Denver Mountain Parks: Echo Lake, at the bottom of the highway, and Summit Lake Park, at milepost 9. And admission to any of the city's parks is supposed to be free. "A fee-sharing agreement pertaining to Summit Lake Park and entered into on June 8, 2007 between the City and County of Denver and the Forest Service provides that the Forest Service will be responsible for enforcement of their own laws and regulations on lands for which they have jurisdiction," notes one of the filings in the case. "The agreement further states that the Forest Service will not issue notices on behalf of Denver. Nonetheless, the Service threatens federal criminal prosecution on land within the jurisdiction of the City and County of Denver." Ditto for cars parked on the state highway. Forest Service staffers regularly hand out "compliance envelopes" to cars parked all along the road, asking their drivers to pay on the way out.

"When I have decided to drive the road without purchasing a pass," Scherer told the court, "the Forest Service has given me a slip of paper to remind me of the Forest Service's policy of no stopping, and

inviting me to return and pay the fee another time." This paper also threatens a \$25 fine and legal action if the owner of the vehicle does not pay the fee.

"On a typical day," Scherer continued, "I have observed that one of the Forest Service's first actions is to drive the Mount Evans corridor and check vehicles for compliance, and to issue notices to those vehicles that are believed to be non-compliant."

Last year, 59,000 vehicles drove Mount Evans. Almost 48,000 of them paid the \$10 fee.

Shaking down citizens was not what Mayor Robert Speer had in mind when he proposed that a road be built up Mount Evans, just thirty miles from Denver, back in 1910. By 1915, the Colorado Division of Agriculture had made his dream drive part of the proposed "Peak to Peak Highway," which was to connect Longs Peak to Pikes Peak. Although the Peak to Peak ultimately stopped several peaks short of that grandiose goal, the state started building a dirt road up Mount Evans in 1917 and completed the job ten years later. The road was paved in the '30s, and a small restaurant, the Crest House, was built at the top in the '40s. Although it burned down in 1979, the stone foundation has become a viewing platform — where you "can see for miles."

The drive is such a stunner that Rich Grant, the communications director for Visit Denver, thinks the city is missing a bet by not promoting Mount Evans more. Although it might help if the peak had a better name, he admits, or at least a dual name, like the Denali/Mount McKinley arrangement, since Colorado's second governor, John Evans, doesn't have the most impressive resumé. (The Sand Creek Massacre happened on his watch in 1864.)

"It's one of the most undersold and underappreciated attractions on the whole Front Range," Grant says. "People know Pikes Peak, and thousands climb Longs Peak, but Mount Evans isn't a very sexy name."

How about Pay to Park Peak?

Since Scherer filed his lawsuit — which now has four other nature lovers as plaintiffs — he and his attorney, Mary Ellen Barilotti, have made several interesting discoveries.

For example, in 2005 a Forest Service official sent an e-mail alerting staffers at Mount Evans to "be very careful about what we do...Make sure you read the law and interim direction to make sure you are not charging for activities that the Act explicitly says you can't charge for. Remember that this law is very focused on developed sites and special services...Keep in mind that if someone stops along the way to have a picnic, there is no fee." But she also directed the staff not to "advertise this capability."

The Forest Service's Fee Collection Guidelines, dated on April 22, 2005 (and still current), state that "Fees will not be charged: For overlooks or scenic pullouts."

The Forest Service's Mount Evans Operation Manual printed in 2008 notes that "Summit Lake is City and County of Denver property, and the Forest Service has no authority to write violation notices for this area."

In January 2009, a Forest Service program manager advised that "at undeveloped sites, occupied parked vehicles or unoccupied parked vehicles where the occupants are in close proximity to the vehicle are...not subject to the recreation fee at that location."

With evidence like that, the Forest Service failed to get the lawsuit tossed. Now all the briefs have been filed, and it's up to the judge.

"The way we interpret the law, if there are amenities, it's not free," says Barilotti, who's arguing a similar case involving Mount Lemmon near Tucson. "But everything is wilderness outside the

perimeter of the highway." And while the Mount Evans Wilderness Area is an undeniable asset to Colorado, it's technically not an amenity.

How does the Forest Service define amenities? "As long as you drive to the top and back without stopping, you don't need to pay," repeats Bustos, the only Forest Service official authorized to talk about the case.

The Forest Service is far more creative with its website messages. "The Clear Creek Ranger District invites you to drive the highest road in North America!" it chirps. "This drive offers visitors scenic views of the Continental Divide, mountain goat and bighorn sheep herds, wildflowers and Bristlecone Pine trees."

But unless you want to see that scenery on a drive-by, prepare to pay.