



Mount Evans settlement makes it free to look

By Patricia Calhoun

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"Who wants to fight government, especially over \$10?" That's what David Scherer asked himself when he thought the U.S. Forest Service was incorrectly charging a \$10 fee to everyone who drove up Mount Evans -- even drivers who did not stop as they took in the view. But as he looked into it, he got his answer: [He'd fight the government.](#)



And so he sued the U.S. Forest Service.

Back in 1997, under the new federal Recreational Fee Demonstration Act, the Forest Service had 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But charging access to public land proved so unpopular -- not just in Colorado, but across the country -- that Congress repealed Fee Demo in 2004 and replaced it with the Federal Lands Recreation Enhancement Act, which prohibits the Forest Service and other agencies from charging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 as Scherer, a regular visitor to Mount Evans and an active member of the [Western Slope No-Fee Coalition](#) since 2001 discovered, the Forest Service interpreted "amenity" very strictly: If you stopped anywhere along the road, you paid the \$10 fee. If you'd somehow convinced the staffer at the entry booth that you didn't need to the fee -- not that staffers were forthcoming about the nuances of the law -- and later pulled over, even just to gaze at the view, you'd get a request to pay up.

And so Scherer and a handful of others -- John Licht, Mike Lopez, Barbara Brickley and Aaron Johnson -- filed suit in U.S. District Court, charging that the Forest Service's "amenity fee" had "exceeded the scope of its legislative authority in implementing the Federal Lands Recreation Enhancement Act" at Mount Evans Recreation Area.

But the court determined that it could not strike the fee: "For better or worse, the Legislature has said that the Service may -- sometimes - charge visitors...so some lawful applications of the policy do exist... [the fee] might well be susceptible to a winning challenge as applied to certain particular visitors, perhaps even the plaintiffs themselves. But that's a path the plaintiffs haven't asked us to explore and so one we leave for another day."

And now that day has finally come. Although the Tenth U.S. Circuit Court of Appeals upheld the lower court ruling last August, the [Denver Post reports](#) that in a settlement agreement reached last week that echoes an earlier, [Ninth Circuit decision regarding use of Mount Lemmon](#) outside of Tucson, the Forest Service is dropping fees for those who don't use the three official amenities along the road: the viewing platform at the top, the Mount Goliath interpretive area and Summit Lake Park, which is owned by the City of Denver.

Rather than stopping drivers at the entrance to the road, the Forest Service plans to install fee-collection stations at the parking lots for those three amenities.

And for now, at least, you're free to take a peek at the peaks -- at least from the side of the road.

Driving up Mount Evans is a must for any visitor to this state. Now that Governor John Hickenlooper has declared that "Colorado's back," here's [Hickenlooper's Colorado bucket list for 2012](#).



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