

Summit County Citizens Voice

Lawsuit challenges Forest Service day-use fees

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Colorado sites could be affected by the outcome of the court case



(<http://summitcountyvoice.com/2012/09/13/lawsuit-challenges-forest-service-day-use-fees/1-209/>)

Fees charged at day use areas like Pine Cove, in Summit County, Colorado, are being challenged in court by public land advocates.

By Bob Berwyn

SUMMIT COUNTY — After chipping away at unauthorized fees in places like Mt. Evans (<http://summitcountyvoice.com/2012/07/03/forest-service-cuts-pay-to-play-fees-at-mt-evans/>) and backcountry trail heads, public lands activists are now challenging the Forest Service's use of private campground operators as proxies to charge fees where they may be prohibited by federal law.

A new lawsuit filed in U.S. District Court in Washington, D.C. could end the widespread practice of charging fees at day-use areas via private for-profit concessionaires who manage nearby campgrounds.

The lawsuit identifies five specific sites, including Bagby Hot Springs and Big Eddy day use sites on the Mt. Hood National Forest in Oregon, Rose Canyon Lake on the Coronado National Forest in Arizona, Second Crossing on the Tonto National Forest in Arizona, Walton Lake on the Ochocho National Forest in Oregon, and Rampart Reservoir on the Pike National Forest in Colorado.

“These recreation facilities are located on federal land and were built with taxpayer dollars. The Forest Service can’t just declare them exempt from federal law by hiring private contractors to run them. It’s a backdoor route to the privatization of our public lands and an outrageous disregard of congressional direction,” said Olivia Schmidt, program director at BARK (<http://www.bark-out.org/>), an Oregon group watch-dogging Mt. Hood National Forest.

Most of day-use fees charged by private concessionaires have never been subject to the public-review and approval process required by the Federal Lands Recreation Enhancement Act, according to Western Slope No-Fee Coalition (<http://www.westernslopenofee.org/>) president Kitty Benzar.

The Forest Service may argue in court that the day-use fees are authorized under an altogether unrelated law — the Granger Thye Act, under which the concession program is authorized. The fees collected at day use areas help directly pay for the maintenance of toilets and other facilities, according to the Forest Service.

Fee critics say they’ve been discussing the day use fees with federal officials for a while.

“We have been raising these concerns with the Forest Service for several years but they have refused to adjust their policies,” Benzar said. This litigation is being undertaken to establish that the National Forests belong to the people, not the federal agencies and their profit-driven recreation industry partners.”

The outcome of the case could ultimately affect at least a couple of spots in Summit County where the Forest Service has authorized private campground operators to charge day use fees at Heaton Bay day use area and Pine Cove day use area.

“The forest service has taken inconsistent positions – sometimes they say it applies, sometimes they say it doesn’t,” said public interest attorney Matt Kenna, who represents the plaintiffs in the civil suit.

Kenna said federal law is clear as to where the agency can — and where it can’t — charge fees, and court rulings in the past few years have underscored the limits of the agency’s fee authority.

“It prohibits the Forest Service from charging people who just want to park and go hiking on undeveloped lands,” Kenna said. That was established in the Adams versus Forest Service case in the Ninth Circuit Court of Appeals (<http://www.scribd.com/doc/82260413/USFS-Fees-Court-Ruling>),” he said, referring to a ruling that required the agency to revamp its fee structure for the Mt. Evans area.

The Forest Service has acknowledged this ruling, but it has not yet acknowledged that the same guidelines apply to private campground operators, he explained.

The agency generally won’t discuss issues under litigation, but in communications with public land advocates and in Congressional hearings, top agency leaders have said that the law under which concessions are authorized is separate from the law that governs recreation fees. The concession law also permits the campground operators to charge fees for day use areas, the agency claims.

The Forest Service has taken the position that the fee requirements and restrictions only apply when the fee is collected directly by the agency. When contracting with a private concessionaire to operate a recreation site, the Forest Service claims, the fees charged by the concessionaire are exempt from the REA.

The fee authorization law also established federal recreation passes that can be purchased at a national or regional level to cover day use site fees and provide discounts on camping for seniors and those with permanent disabilities. The Forest Service is obligated to accept these federal passes, but they allow their private concessionaires to reject them. As more and more sites are placed under concessionaire permits, the value of federal passes is dramatically diluted. Concessionaires often issue their own private annual passes and require those for access to the federal facilities under private control.

Background

About half of all Forest Service campgrounds are now operated by concessionaires, representing about 80 percent of reservable campsites, which tend to be in the most popular places. Since the passage of the REA in 2004 the Forest Service has been transferring day use sites to concession management as well, and income from day use now represents about 12 percent of concessionaire revenue.

Many of these day use sites were never approved for fees through the public participation and review process required in the REA. Some do not qualify for fees at all because they are undeveloped sites that only provide access to trails, rivers, or lakes.

The plaintiffs in the case include Bark, an Oregon non-profit that watchdogs the Mt Hood National Forest, and five individuals in Oregon, Arizona, and Colorado who are working with the Western Slope No-Fee Coalition.

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