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Summit County (CO) Voice

Outdoors: Public lands access advocates win another round in the battle over federal recreation fees

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The legal battles over Forest Service recreation fees continue

District court judges nixes Southern California Adventure Pass

By **Bob Berwyn**

FRISCO — The see-saw legal battles over public land recreation fees took another twist last week, as a judge in California decided that the U.S. Forest Service can't continue selling its Adventure Pass for heavily visited recreation areas in Southern California national forests.

According to the judge, the pass violates federal law — specifically the Federal Lands Recreation Enhancement Act — because it makes visitors pay to use public lands even if they're not using any developed facilities.

“The Forest Service is prohibited from charging a fee solely for parking. If a visitor does nothing other than park, the fee is solely for parking and is, therefore, plainly prohibited by the REA,” the court ruled, referencing previous court decisions.

The new ruling reinforces the decision from [another case in Arizona](#) decided about a year ago and may force the Forest Service to rethink how it administers the recreation fee program. Last week's ruling by Judge Terry Hatter, of the District Court Central District of California Eastern Division, potentially affects millions of visitors to national forest lands in Southern California.

In the current case, four southern California hikers sued in October 2012 to require the Forest Service to follow the *Adams* ruling and to cease charging for parking throughout the Adventure Pass area. The judge ordered the Forest Service to refund the money back to the hikers.

Recreation fees were first authorized in a pilot program in the mid-1990s, then codified by Congress about 10 years later, with very site-specific requirements for fee areas, with the idea that most of the

money collected goes directly back to improve the site rather than flowing into the general treasury. Rather than sticking to the clearly written law, the Forest Service looked for ways to charge fees in broader areas, claiming that it was a more cost-effective way to administer the fee program.

The agency was also rebuffed in court when tried that same tactic here in Colorado on Mt. Evans Road, charging a general entry fee for the entire area.

The latest legal ruling could affect the administration of fees in other places, including the Maroon Bells, near Aspen, where the Forest Service also charges a general entry fee, with the idea that the area includes enough developed facilities that it qualifies as a fee area.

But access advocates, primarily the [Western Slope No-Fee Coalition](#), have battled the feds in a sort of holding action, trying to curb the excessive spread of fees and fighting to preserve free access for people who simply want to park at a trailhead and go hiking without using any developed facilities.

At Mt. Evans, the Forest Service complied with the the court's decision by only charging fees when people stop and park at the areas with developed facilities: Bathrooms, picnic tables, trash disposal or interpretive areas.

That's also the solution for other parts of the country, said Western Slope No-Fee Coalition president Kitty Benzar, adding that she can't understand why the agency continued to charge an area fee in Southern California after losing the Arizona court case.

The Forest Service has sold as many as 300,000 Adventure Passes annually in the Pacific Southwest region, but the charges remain unpopular — in 2008, the agency issued about 40,000 notices to people who didn't pay in sort of a silent protest against the fees.

"This is a business model that Tony Soprano would recognize in an instant," Benzar said.