

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 08-CV-00917-MEH-KMT

**DAVID P. SCHERER,
JOHN H. LICHT,
AARON JOHNSON,
MIKE LOPEZ,
BARBARA BRICKLEY**

Plaintiffs,

v.

**UNITED STATES FOREST SERVICE,
GLENN P. CASAMASSA,
Forest Supervisor for Arapaho & Roosevelt
National Forest; and TROY EID, United States Attorney,**

Defendants.

DECLARATION OF PAUL E. CRUZ

I, Paul E. Cruz, Forest Recreation Program Manager, United States Department of Agriculture (USDA), Forest Service, Arapaho and Roosevelt National Forests and Pawnee National Grassland, Fort Collins, Colorado, declare that:

1. I am employed by the USDA, Forest Service, in Fort Collins, Colorado, as the Forest Recreation Program Manager for the Arapaho and Roosevelt National Forests and Pawnee National Grassland. My duties in this position include administration of the Recreation and Trails Programs for the Arapaho and Roosevelt National Forests and Pawnee National Grassland. I have held this position since September 2002.

NOTE the careful avoidance of referring to the summit of Mt Evans as an “overlook” and the denial that there are any “overlooks” along the road. That’s because the law very explicitly prohibits fees for overlooks.

2. My duties require me to have first-hand knowledge of the Mt. Evans High-Impact Recreation Area (HIRA) and any improvements in the HIRA, as authorized under the Federal Lands Recreation Enhancement Act (REA). I have read the amended complaint in Scherer v. United States Forest Service, No. 08-CV-00917-MEH-KMT (D. Colo.), and am familiar with the allegations contained in the amended complaint.

3. Based on my personal observations and knowledge, there are no developed scenic pullouts or overlooks along the road leading up Mt. Evans. Rather, there are unpaved, undeveloped pull-offs of limited width and varying length along the narrow and twisting two-lane, paved highway leading up the mountain that can accommodate one to several vehicles, depending on the location of the pull-off.

4. While these pull-offs are used by the public for recreational viewing, parking and motor vehicle safety, they are not designed, constructed, maintained, or managed by the Forest Service for those purposes.

5. Rather, the pull-offs along the road leading up Mt. Evans were created by the State of Colorado Department of Transportation in conjunction with work on the road leading up Mt. Evans.

6. Because of the configuration of the Mt. Evans HIRA, which has a paved road up a mountain leading to substantial federal recreational facilities at the summit, those stopping at the pull-offs typically also visit the Mt. Evans summit, the Dos Chappell Nature Center and other sites in the HIRA as part of an integrated recreation experience, with the paved parking lot at the summit being the ultimate destination point for most visitors to the Mount Evans road corridor.

NOTE the contradiction. If you stop to take a picture or simply take in the view, you are not “traveling non-stop.”

7. If, however, someone at the Mt. Evans fee station states that he or she is not stopping within the HIRA other than to take a picture at a pull-off or simply to take in the view, the Forest Service will not charge that person the standard amenity recreation fee. This procedure is illustrated by the sign at the fee/information station at the base of the HIRA, which is hung immediately below the fee sign and which reads, “TRAVEL NON-STOP ON ROAD NO CHARGE.”

8. Additionally, there are two signs posted near the fee/information station that support the procedure not to charge for non-stop or through-travel on the road leading up Mt. Evans. Both signs state, “PARKED VEHICLES MUST DISPLAY A VALID RECREATION PASS – NEXT 15 MILES.”

9. Consistent with these signs, compliance efforts focus on any parked vehicles at developed sites and unoccupied parked vehicles at undeveloped sites (like pull-offs) in the HIRA. The rationale for this approach is that these conditions indicate that the owner and occupants are recreating within the HIRA and using the area’s facilities and services. Conversely, at undeveloped sites, occupied parked vehicles or unoccupied parked vehicles where the occupants are in close proximity to the vehicle are considered to be in through-travel status and therefore not subject to the recreation fee at that location.

NOTE: Huh?

10. The security services provided in connection with unoccupied parked vehicles within the HIRA include frequent observation by security patrol, protection from vandalism, and follow-up if the occupants do not return in a reasonable timeframe thereby indicating possible injury, accident or need for search and rescue. The Forest Service provides these security services from revenue generated by the standard amenity recreation fee charged at Mt. Evans.

NOTE: Contradiction between paragraph 12 and paragraph 7. You cannot both drive non-stop *and* stop to take a photo or enjoy the view.

11. In the Mt. Evans HIRA, there is a clear distinction between fee compliance activities and law enforcement actions for fee violations.

12. In conducting compliance efforts, the Forest Service provides information to visitors and offers them an opportunity to pay when it is apparent that they are not merely driving non-stop through the HIRA. The opportunity to pay is offered via a blue envelope marked "NOTICE." Based on plaintiffs' amended complaint, this appears to be the kind of notice received by Plaintiff David P. Scherer.

13. Compliance efforts are documented in a spreadsheet for purposes of estimating the potential revenue loss and impacts on the Forest Service's recreation fee program.

14. In conducting law enforcement for fee violations, the Forest Service typically issues a written warning notice for a first time offense (failing to pay established fee), followed by a notice of violation for a second offense. Written warning and/or violation notices typically follow an ineffective compliance effort of the same day.

15. Warning notices are documented in an incident report, which identifies the noncompliant individual by name, address, vehicle, and other personal information and describes the incident and its location and the offense.

16. Notices of violation are documented in a violations report, which identifies the noncompliant individual by name, address, vehicle, and other personal information; describes the incident and its location and the offense, including its severity and any applicable fine.

17. Incident and violations reports are recorded in the Forest Service Law Enforcement Incident Management Accounting and Reporting System (LEIMARS).

18. Since REA was enacted on December 8, 2004, only four warning notices and two notices of violation have been issued in the Mt. Evans HIRA and only one of the four warning notices was issued at Summit Lake. During that time frame, approximately 492,087 people visited the Mt. Evans HIRA. No one who has received a warning notice or notice of violation in the Mt. Evans HIRA has been prosecuted.

19. I have reviewed Exhibits A-1 through A-22 (see Government Exhibit Index for Civil Action No. 08-CV-00917-MEH-KMT) and declare under penalty of perjury in accordance with 28 U.S.C. § 1746 that the documents are true and accurate copies of official government records maintained by the USDA Forest Service and that the foregoing statements are true and correct to the best of my knowledge.

Executed on this 13th day of January, 2009.

/s/ Paul E. Cruz
Paul E. Cruz
Forest Recreation Program Manager
Arapaho and Roosevelt National Forests
and Pawnee National Grassland
USDA, Forest Service

NOTE: Perhaps that's because they are issuing warnings and violation notices in places where they have no jurisdiction to do so (Summit Lake) and in places where the law prohibits them from charging a fee (overlooks), and they don't think they can make those cases stick.

U.S. Forest Service
Civil Action No. 08-CV-00917-MEH-KMT
Government Exhibit Index

<u>Exhibit #</u>	<u>Document</u>	<u>Date</u>
A-1	USFS Interim Implementation Guidelines for REA	2005, April 25
A-2	WO Memo: Implementation Guidelines for REA	2005, April 25
A-3	Mt. Evans 1997 Rec. Fee Demo Business Plan	1997, May 11
A-4	Mt. Evans 2007 REA Business Plan	2007, January
A-5	USFS Mt. Evans Briefing Paper	2008, Feb. 13
A-6	Photo: Mt. Evans Welcome Sign and Fee List	2008, May 31
A-7	MOU between USFS and Colorado DOT	2007, May 25
A-8	Map: Mt. Evans Surrounding Area Free Use Facilities	2008
A-9	REA Implementation Plan for CCRD/Mt. Evans	2005, Sept
A-10	Mt. Evans REA 2006 Annual Report	2006
A-11	Region 2 Charter for REA Rec. Fee Board	2005, Oct. 26
A-12	Spreadsheet: Region 2 REA Fee Site Acceptance	2005, June
A-13	Map: Mt. Evans Recreation Area	2008
A-14	Photo: Mt. Evans Road Pull-off	2008, Sept. 10
A-15	Photo: Mt. Evans Road Pull-off	2008, Sept. 10
A-16	Photo: Mt. Evans Road Pull-off	2008, Sept. 10
A-17	Photo: Mt. Evans Sign: Must Display Valid Rec. Pass	2008, May 31
A-18	Collection Agreement: USFS and Denver Mtn. Parks	2007, June 08
A-19	Declaration by Paul E. Cruz, Forest Rec. Program Mgr.	2009, Jan. 13
A-20	Opportunity to Pay Card	2008
A-21	NOTICE: Opportunity to Pay Envelope	2008
A-22	Redacted Notice of Violation	2005, July 30