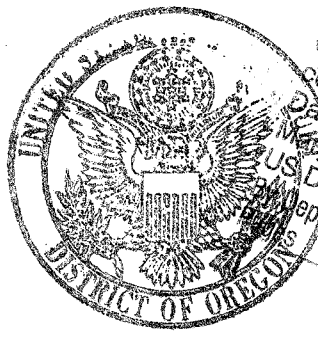


S. AMANDA MARSHALL, OSB #95347
United States Attorney
District of Oregon
SETH D. URAM, D.C. #376214
Assistant United States Attorney
seth.uram@usdoj.gov
NATHAN SRAMEK
Certified Law Student
nathan.sramek@usdoj.gov
1000 S.W. Third Ave., Suite 600
Portland, OR 97204-2902
Telephone: (503) 727-1000
Facsimile: (503) 727-1117
Attorneys for United States of America



Certified to be a true and correct
copy of original filed in this District
Dated 2/24/12
L. Moran, Clerk of Court
Deputy Clerk
Through [Signature]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA

CVB Violation No. F4561661/OR53

v.

ADIRAJA FAIRBANK,

Defendant.

**GOVERNMENT'S MOTION
TO DISMISS**

The United States of America, by and through S. Amanda Marshall, United States Attorney for the District of Oregon, and Assistant United States Attorney Seth D. Uram, and Certified Law Student Nathan Sramek, hereby moves this court for an order dismissing Central Violations Bureau

Violation Number F4561661/OR53, issued to the defendant on July 23, 2011. This violation should be dismissed in light of Adams v. U.S. Forest Service, No. 10-16711, 2012 WL 400440 (9th Cir. Feb. 9, 2012).

On July 23, 2011, defendant was cited for failing to pay a recreational fee at the Herman Creek trailhead, in the District of Oregon. Defendant alleges that he merely parked his car at the Herman Creek trailhead, and spent two nights hiking and backpacking in the Mount Hood National Forest.

On February 7, 2012, defendant filed a motion to dismiss the violation in this matter, arguing that the U.S. Forest Service lacked authority to impose a fee for parking at the Herman Creek trailhead because it was within a “High Impact Recreational Area” (HIRA). Defendant also argued that the Herman Creek trailhead lacks the “[i]nterpretive sign, exhibit, or kiosk” required before the U.S. Forest Service may charge a standard amenity recreation fee under the Federal Lands Recreation Enhancement Act (REA), 16 U.S.C. § 6802(f)(4).

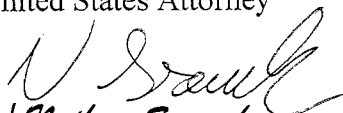
On February 9, 2012, two days after defendant filed his motion to dismiss, the Ninth Circuit issued its opinion in Adams, which held that the U.S. Forest Service may not charge a recreational fee for visitors who “park a car, then camp at undeveloped sites, picnic along roads or trailsides, or hike through the area without using the [available] facilities and services.” Adams, No. 10-16711, 2012 WL 400440, at *6. The court acknowledged, however, that the U.S. Forest Service may impose a fee for any designated, developed parking facility that meets the requirements of 16 U.S.C. § 6802(f)(4). Adams, No. 10-16711, 2012 WL 400440, at *5 n.13.

Though the Herman Creek trailhead currently meets the requirements of section 6802(f)(4), the U.S. Forest Service did not install the required “[i]nterpretive sign, exhibit, or kiosk” until some

time in mid to late July of 2011. Because the government is unable to establish that the interpretive sign was in place at the time defendant was cited, the government moves to dismiss the violation against the defendant. A proposed dismissal order is attached.

DATED this 23rd day of February, 2012.

S. AMANDA MARSHALL
United States Attorney


/s/ Nathan Sramek

NATHAN SRAMEK
Certified Law Student
(503) 727-1000