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Minnesota Office
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55406

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P.O. Box 9765
Moscow, ID 83843

September 9, 2021

White River National Forest
ATTN: Recreation Fees
PO Box 309
Carbondale, CO 81623

Sent via: <https://cara.ecosystem-management.org/Public/CommentInput?Project=NP-2849>

Dear U.S. Forest Service Staff,

The following comments come from Wilderness Watch regarding the proposal to institute a new special recreation user fee for the Maroon Bells-Snowmass Wilderness on the White River National Forest in Colorado. Wilderness Watch is a national wilderness conservation organization focused on the protection and proper stewardship of all units of the National Wilderness Preservation System, including the Maroon Bells-Snowmass Wilderness.

The proposal calls for implementation of a new special recreation overnight permit fee of \$12 per person, per night to visit various locations within the Wilderness. The Forest Service indicates the fees are necessary to fund site restoration work, trail work, and wilderness staffing in response to growing visitor use. Wilderness Watch opposes the proposed recreation user fees for the following reasons:

**1. User fees should not be instituted just to hike and camp in Wilderness.
Wilderness should not be commodified.**

a. Taxpayers already support the stewardship of the Maroon Bells-Snowmass Wilderness through the taxes they pay. Wilderness is a public good for all citizens of the United States; it provides benefits to society broadly and even to those who never visit. Wilderness and its benefits should therefore not be reduced or valued by the Forest Service to just those who pay specific user fees.

b. Wilderness recreation user fees discriminate against lower income people. The Forest Service often talks about needing to broaden the constituency for wilderness and public lands. Effectively denying access to lower income people because of user fees is NOT a way to broaden this constituency.

c. Wilderness user fees tend to transform wilderness visitors from owners-stewards of the area to customers who expect others to steward the area, who expect the Forest Service to provide amenities, pick up litter, or clean up campfire rings because the visitor paid the Forest Service to do this. This is not the message of self-reliance and responsibility that wilderness users should be receiving.

d. Wilderness user fees tend to transform the Forest Service from a wilderness stewardship agency to a fundraising business addicted to easy user fees. Agencies are budget maximizers and tend to promote those things that bring in revenue. Charging user fees will be a disincentive to reducing use where crowding or site impacts are a problem. Fees will also serve as an incentive to overdevelop the area or provide unnecessary amenities in order to please “customers” or justify ever-increasing fees. As John Muir famously quipped, “Nothing dollarable is safe.”

2. The Forest Service doesn’t have legal authority under the Federal Lands Recreational Enhancement Act (REA) to institute recreation user fees in this Wilderness.

“As a general rule Congress has decreed that anyone may enter this country’s great national forests free of charge.” *Scherer v. U.S. Forest Serv.*, 653 F.3d 1241, 1242 (10th Cir. 2011) (citing 16 U.S.C. § 6802(e)(2)). Under the REA, agencies may charge a fee for certain developed areas providing specific amenities; however, the REA “ma[kes] clear that the [Forest Service] will not be permitted to charge [for] non-developed areas....” H.R. Rep. No. 108-790(I), at 14 (2004). Wilderness, by its very nature and by statutory mandate, is a non-developed area. Fees are not allowed “where nature is the sole attraction.” *Alpern v. Ferebee*, 949 F.3d 546, 551 (10th Cir. 2020).

Under REA, the Forest Service can only charge fees at a trailhead where the agency has provided all six of the requisite amenities:

- (i) Designated developed parking.
- (ii) A permanent toilet facility.
- (iii) A permanent trash receptacle.
- (iv) Interpretive sign, exhibit, or kiosk.
- (v) Picnic tables.
- (vi) Security services.

16 U.S.C. § 6802(f) (2018).

The REA further stipulates that “[t]he Secretary shall not charge any standard amenity recreation fee or expanded amenity recreation fee for Federal recreational lands and waters administered by the Bureau of Land Management, the Forest Service , or the Bureau of Reclamation under this chapter for any of the following:

- (A) Solely for parking , undesignated parking, or picnicking along roads or trailsides
- (D) For persons who are driving through, walking through, boating through, horseback riding through, or hiking through Federal recreational lands and waters without using the facilities and services
- (F) For use of overlooks or scenic pullouts.”

Id. § 6802(d)(1), (f).

Charging for parking at one of the amenity areas that provide all six of the required amenities may be approved, but the *Alpern* case states that the federal agencies can't charge a fee beyond that: "The REA's legislative history supports this view by showing that Congress intended for fees to support agency investment in the corresponding fee area, while preserving free access to undeveloped public lands." *Alpern v. Ferebee*, 949 F.3d 546, 550-51 (10th Cir. 2020) (highlight added). Moreover:

In addition to providing a revenue source to help "enhance the visitor experience by investing fees in improving recreation opportunities[.]" the REA's drafters were concerned that allowing blanket access fees would impose "an unreasonable barrier to public use." *Id.* For this reason, the REA "was overly prescriptive to alleviate concerns of those who no longer trust certain federal land management agencies with the recreation fee authority." *Id.* at 14. For example, the REA "ma[kes] clear that the [the Forest Service] will not be permitted to charge solely for parking, scenic pullouts, and other non-developed areas" *Id.* In this way, the REA attempts to limit fees for areas where federal investment/development is lacking—*i.e.*, the area is non-developed. Such non-developed areas include roadsides, off-trail land, and other locations in which the visitor's experience is enhanced solely by the outdoors, not by agency-provided amenities. This legislative history backs up the statute's plain language—fees are typically allowed where federal investment has occurred but not where nature is the sole attraction.

Id. at 551 (highlight added). So the Forest Service cannot rely on the REA to authorize this fee.

3. The Forest Service should first limit and distribute visitation via a restricted access permit system, with no fee, and administer the permit system internally, without going to recreation.gov.

It does not appear that the Forest Service has tried to limit and disperse visitation use via a limited permit system *without* jumping to user fees at the same time. The agency should implement a limited permit system without instituting user fees to alleviate crowding and resource damage at high-use areas.

After operating a limited permit system for several seasons, the Forest Service should analyze changes in visitor behavior, crowding, resource damage, etc., and then determine what other steps, if any are then still needed, might be undertaken.

4. If the Forest Service needs additional wilderness rangers for this Wilderness, the agency should request funding from the millions of dollars that Congress appropriated last year or through the normal appropriations process.

Forest Service staffing should be funded by Congressional appropriation, not public user fees. Unfortunately the Forest Service nationally has seen a decline in the number of professional wilderness rangers it employs, and has relied increasingly on volunteer groups to conduct basic wilderness stewardship functions such as trail clearing. This decline in wilderness rangers may have also affected the Maroon Bells-Snowmass Wilderness. Wilderness Watch strongly supports the professional wilderness ranger positions and has regretted seeing the Forest Service decrease the number of those positions nationwide.

If this is the case for the Maroon Bells-Snowmass, we strongly urge the agency to seek funding for permanent wilderness ranger positions through the millions of dollars that Congress appropriated last year, or through the normal appropriations process. Budgets are how agencies express their priorities.

By continuing to not request adequate funding for wilderness rangers, and instead relying on user fees or volunteers, the Forest Service is telling Congress and the higher-ups in the administration that Wilderness and a professional wilderness staff are not important to the agency. That needs to stop. The Forest Service shares much more of the blame on declining numbers of wilderness rangers than does Congress.

Please keep Wilderness Watch informed of any further steps in this process.

Sincerely,

A handwritten signature in brown ink that reads "Kevin Proescholdt". The signature is fluid and cursive, with "Kevin" on top and "Proescholdt" below it.

Kevin Proescholdt
Conservation Director