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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES T. SMITH,

Defendant.

) CIV 108173 PCT - MEA
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) Citation No. F3999985
)
) ORDER
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)

Before the Court is Defendant's Motion to Dismiss. Defendant was cited for failure to pay a "Red Rock" recreation fee, in violation of 36 C.F.R. § 261.17,¹ a misdemeanor infraction for which the maximum fine is \$100. Defendant contends that the regulation establishing the recreation fee he is charged with failing to pay is ultra vires of the authority delegated to the Secretary of Agriculture by Congress, is violative of due process, and thus void.

The Court has thoroughly reviewed the pleadings submitted by the parties. After said review the Court finds

¹ 36 C.F.R. § 261.17 provides: "Failure to pay any recreation fee is prohibited. Notwithstanding 18 U.S.C. 3571(e), the fine imposed for the first offense of nonpayment shall not exceed \$100." The Federal Recreation Lands Enhancement Act provides: "The failure to pay a recreation fee established under this Act shall be punishable as a Class A or Class B misdemeanor, except that in the case of a first offense of nonpayment, the fine imposed may not exceed \$100, notwithstanding section 3571(e) of title 18, United States Code." 16 U.S.C. § 6811(d). "The term 'recreation fee' means an entrance fee, standard amenity recreation fee, expanded amenity recreation fee, or special recreation permit fee." 18 U.S.C. § 1601(8).

1 that further information is required to resolve the motion to
2 dismiss. Accordingly,

3 **IT IS ORDERED** that on or before August 9, 2010, each
4 party shall submit a pleading addressing whether the Secretary
5 of Agriculture has complied with each and every one of the
6 provisions of 16 U.S.C. § 6803 when establishing the boundaries
7 and requirements of the Red Rock High Impact Recreation Area and
8 specifically whether a Resource Advisory Committee and/or a Fee
9 Advisory Board were utilized in formulating the interim
10 regulations and establishing the "Red Rock" fee Defendant is
11 accused of failing to pay, subsequent to passage of the Federal
12 Lands Recreation Enhancement Act.

13 DATED this 28th day of July, 2010.

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16 _____
Mark E. Aspey
United States Magistrate Judge