

# Arizona Daily Sun

## Red Rock fees in legal limbo

**CYNDY COLE Sun Staff Reporter | Posted: Tuesday, September 21, 2010 5:05 am**

A Sedona backpacker has won a legal victory in a case questioning whether hikers, horse riders and others must buy a pass to visit much of the unimproved 160,000-acre forest surrounding that city.

The case is important because it calls into question the legality of charging someone a fee to use a wilderness area or unimproved trailhead in more than 90 other Forest Service areas nationwide. It also opens the door for others to ask that some Red Rock pass citations be dismissed.

"We've got millions and millions of acres of public land that are going to be freed up by this decision" if it stands, said Kitty Benzar, president of the Western Slope No-Fee Coalition.

"If you're just on a forest road somewhere in the Coconino and Kaibab and you pull over and spend the night, they can't charge you for that," Benzar said.

A spokeswoman for the Red Rock Ranger District said the agency was weighing whether to appeal, and whether it would also reconsider where the passes are needed.

Retired geophysicist Jim Smith, of Sedona, went backpacking down the Dry Creek Trail in the Red Rock/Secret Mountain Wilderness last November without a Red Rock Pass.

The Coconino National Forest says the \$5-per-day pass is required for hiking in about 160,000 acres of "high-impact recreation areas" near Sedona. The pass system raises \$800,000 a year, which is used for things like trash removal, signs, restrooms and road maintenance.

Smith returned to his truck to find a \$100 citation for hiking without a pass, and then spent the winter preparing legal briefs to fight it by looking up other cases on the matter.

The Forest Service offered to drop its case in the spring if Smith would pay the \$100, he said.

He declined.

"It's sort of in the spirit of community service," Smith said. "I think that I'm right and it's going to be easier for someone else to file a motion to dismiss (a citation) if they have documents from another case already available."

U.S. Magistrate Judge Mark E. Aspey sided with Smith on Sept. 14, dismissing his citation.

In his written ruling, Aspey said that although the Forest Service could legally require passes and collect fees in areas with improvements -- like restrooms, picnic tables, parking spots or trash collection -- the agency couldn't require someone to have a pass just to visit an unimproved trailhead, or a wilderness.

That basically agrees with what the anti-fee group asserts.

Requiring a Red Rock Pass is not entirely illegal, wrote the judge, just in certain cases.

"However, dismissing this citation is not the death knell of the Red Rock Pass program," Aspey wrote. "The record before the court reveals numerous recreation sites and locations within the Red Rock (high impact recreation area) which qualify as 'areas' where charging a recreational amenity fee would not violate the other provisions" of the federal law governing where the Forest Service can charge fees."

This is called the Federal Lands Recreation Enhancement Act.

Smith says he considered the odds before fighting the citation.

"It's a vast area, 10 miles to the nearest trash service ... I just found it difficult to figure out how the judge could find me guilty," Smith said.

He vowed to pursue the case higher if the Forest Service appeals last week's ruling.

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