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Sedonan Challenges Feds Red Rock Pass Fee and Wins in Court

[admin](#) / September 20, 2010 / [5 Comments](#)

Dear SedonaTimes.com Editor:
Not any more it's not!



An important decision has been handed down by Federal Magistrate Judge Mark Aspey in Flagstaff, Arizona. He granted a motion by Sedona resident Jim Smith to have his ticket for failure to pay a Forest Service recreation fee (i.e. have a Red Rock Pass) dismissed.

Jim parked overnight at the Vultee Arch Trailhead, a dirt parking lot with no amenities accessed by a rough dirt road. He backpacked into the Coconino National Forest, camped in an area with no amenities, and returned to find a ticket on his car because it did not display a Red Rock Pass.

The Red Rock Pass fee program is one of the most notorious in the nation, requiring an access fee for 160,000 acres of federal public land, much of it dispersed undeveloped backcountry.



Jim challenged the Forest Service's authority to levy a fee at Vultee Arch Trailhead because the law governing recreation fees specifically prohibits fees for parking, general access, walking through federal land without using facilities and services, camping in dispersed undeveloped areas, or in any location that does not offer reasonable access to six specific amenities: permanent toilet, permanent trash container, picnic table, developed parking, interpretive signage, and security services. The Vultee Arch Trailhead offers none of these amenities – it only serves as a place to park and enter undeveloped backcountry, both of which are activities the law says must be free of charge. The nearest toilet is 7 miles away and the nearest trash can is 10 miles away.

Jim represented himself, and he was up against the full might of the federal government, but he won because he proved to the judge that the way the Forest Service is implementing fees in the Red Rock Pass area is not a reasonable interpretation of the law. In fact the decision describes the Forest Service's interpretation as "absurd":

"In addition to the plain language of the statute prohibiting the Forest Service from charging for parking or access or undeveloped camping, and the plain language of the statute prohibiting the Forest Service from charging an amenity fee at a site where specific amenities were not provided, Congressional intent and legislative history indicate that the Forest Service's construction of the relevant statutory section would thwart Congressional intent and result in an absurd construction of the relevant statutory scheme." [decision p. 29]

This is a very important decision, with national implications. There are almost 100 places around the country where the Forest Service has created "High Impact Recreation Areas" or HIRAs. Within a HIRA they have been claiming the authority to charge a fee for any activity at all as long as the six amenities exist somewhere in the HIRA, no matter how scattered or how far away. This interpretation has resulted in visitors being charged fees to access millions of acres of dispersed undeveloped backcountry.

Judge Aspey says nix to all that.



Among other things, this decision renders moot the signs in the Red Rock Pass area that say you have to buy a pass to park anywhere on the National Forest, and makes it unlikely that the Coconino - or any other National Forest - can ever again successfully prosecute someone for not having a pass at trailheads or dispersed camping areas.

You can read more about the case, including all the legal briefs and the judge's decision, [CLICK HERE](#).

Thank you!

Kitty Benzar, Western Slope No-Fee Coalition

westernslopenofee.org

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5 Comments

1.  *Bill Kusner* says:
[September 20, 2010 at 7:33 pm](#)

Now that you have turned off one of the major funding to the RR Ranger District, I hope you are willing to support an increase in your income tax (if you have any) to pay for the maintenance of the the Forest. Nice to say that fees are a problem, but most people are not opposed to paying the nominal amount to maintain and improve the lands we all enjoy.

2.  *Cassobe* says:
[September 20, 2010 at 10:06 pm](#)

Thank You Kitty for bringing Us the Good News. And, to Jim for standing up to His/Our rights.

Bill, Bill, Bill, You either work for the Red Rock Ranger District, or just believe everything They tell You.

Do You know that the Forestry no longer runs any of the Day Use or Campgrounds in the Red Rock District any longer? They're run by Private Management Groups, and Forestry gets Their cut. Forestry says they can no longer afford to pick up trash and clean the restrooms in these areas; but don't You believe Them, they never did. And, do You know who makes the improvements to these areas? The Management Group. Did Y know, because of the resent changes, Local Residents are no longer able to purchase a Grand Annual Pass since last April, that allows them access to the Day Use areas, and have to spend \$10 per visit now, until maybe, this is resolved. Have You heard that if/when the new Pass comes out for these areas, it will no long cover Parking in the Forest? That will be another Annual Pass that will be costing \$30 instead of \$20. Don't You worry Bill, the Forestry is a money making machine, and if They declare everything They bring in, They won't need to touch Your income tax (if you have any).

3.  *jocelyn buckner* says:
[September 21, 2010 at 9:36 am](#)

@Bill K: please check the books. I'm sure you'll find that more is spent than made on the RR pass. When you consider that 2011 will bring more and bigger taxes, it seems its the little guy that gets stuck with the bill. When will the Wall Street banksters pay their fair share? When will we get some COMMON SENSE in government?

The RR Pass was boondoggle to begin with. End it now. End the Federal Reserve while you're at it.

4.  *Meri Berger* says:
[September 21, 2010 at 11:29 am](#)

I agree with Bill K. that these passes are a “nominal amount to maintain and improve the lands we all enjoy.”

I believe Jim Smith was right to object in court over the ticket he received.



I thank the officer who issued it for making his or her rounds – what if Mr. Smith had needed some assistance? (This is just one reason I gladly pay the \$20 each year!) Looking ahead, ticketing officers will do well to learn which areas allow parking without passes.



5. *Warren Woodward* says:
[September 22, 2010 at 8:26 pm](#)

The issue is whether the RR Pass is legal or not. It is not.

All you who enjoy paying your “nominal fee” need to read the judge’s ruling. FS is in violation of the law. Period. Their arrogance in ignoring the law is quite obvious.



6. *Kitty Benzar* says:
Your comment is awaiting moderation.
[September 23, 2010 at 7:18 am](#)

Those who don’t mind giving the Forest Service cash merely to go for a walk in the woods or sit by a stream, please go right ahead. You have always been free to donate any amount you want. If you are glad to pay \$20 a year, why not give them \$40 or \$50? How about \$95? That’s what it costs for an annual pass on the Tonto National Forest. You are not limited to giving them only the price of a pass, so shell out as much as you like. But don’t tell me or Jim Smith that we have to pay fees that violate federal law. Citizens can’t do that and federal agencies shouldn’t be able to either.

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On average, how many meals do you prepare at home during a week? For this poll, the maximum is 3 meals a day for 7 days or 21: The minimum is 0.



- Zero, my kitchen is for show!
- 1-6, PBJ and microwave prepacks rule!
- 7-11, Rachel Ray needs to make it twenty
- 12-16, my goal is to compete on Iron Chef
- 17-21, my mother was named Betty

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