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Red Rock Pass Judge dismisses citation for non-payment of Forest Service recreation fee

by James T. Smith

SEDONA, AZ (Sept 26, 2010) - On September 14th, Magistrate Judge Mark Aspey issued a ruling in Federal Court in Flagstaff to dismiss a citation I received from the Forest Service for not displaying a Red Rock Pass while parked at the Dry Creek/Vultee Arch trailhead. In doing so he dealt a blow to the Forest Service's collection of fees in undeveloped areas around Sedona.

The Red Rock Pass has been controversial in Sedona ever since the Forest Service began collecting fees following Congressional passage of the Recreational Fee Demonstration Project (or Fee Demo) in 1996. While fees had previously been charged for the use of campgrounds along Oak Creek, for the first time forest users had to pay a fee just to park on National Forest land and go hiking. In 2002 the Sedona City Council passed a resolution by a 5-2 vote to request that Congress end Fee Demo. One of the two dissenting council members opposed the fees but disagreed with the wording of the resolution.

Congress responded to widespread opposition to the new recreation fees by repealing Fee Demo in 2004, and in its place enacted the Federal Lands Recreation Enhancement Act (FLREA). The new law allows the Forest Service to charge an amenity fee for an area that contains all of the following amenities: designated developed parking, a permanent toilet facility, a permanent trash receptacle, an interpretive sign, picnic tables, and security services. Congress prohibited the Forest Service from charging a fee solely for parking, for walking through the forest without using facilities or services, for camping at undeveloped sites, or for general access.

Following passage of the legislation, Rep. Greg Walden (R-OR) noted in a press release:

For those sites that are developed with facilities such as information centers, picnic tables, security and restrooms, it is understandable that we who use them pay nominal fees to help maintain them. However, fees should not be collected when there are no funds being invested in a given recreational site. When a hiker parks on the side of the road and ventures onto an unmanaged trail with no amenities along the way, they should

certainly not have to pay.

The Vultee Arch trailhead, where I received the citation, is one of the most remote and undeveloped places in the Red Rocks. The closest toilet facility is at the Boynton Canyon Trailhead, over 7 miles away. The closest picnic table is also over 7 miles away, at a different location. The closest trash service is over 10 miles away. I was aware that the Forest Service demands a fee for parking anywhere in the Red Rock Pass area, but how do they reconcile this claim with the language of the FLREA?

I contacted the Forest Service and discovered that after the passage of the FLREA, they designated the Red Rock Pass area to be a High-Impact Recreation Area, or HIRA, under guidelines released to implement the new legislation. As far as the Forest Service is concerned, the entire 160,000-acre Red Rock HIRA is a qualifying "area" under the FLREA, since there are places within the HIRA that contain picnic tables, public toilets, etc. The prohibitions on charging fees for parking at undeveloped trailheads and walking across National Forest land are ignored.

Searching the Internet for information, I found a group called the Western Slope No-Fee Coalition. Their website has court documents from previous cases, which I used to begin developing a Motion to Dismiss. I was also put in touch with a lawyer, who did not represent me during the litigation but gave helpful advice and reviewed my legal documents. At my initial court appearance I pleaded not guilty, and submitted my Motion to Dismiss two weeks later. I basically said that the Forest Service is not entitled to charge a fee at the Vultee Arch trailhead under the plain language of the law, and that the Forest Service's use of a HIRA to collect fees was inconsistent with the FLREA.

Judge Aspey agreed. In his decision he states:

The FLREA is an extremely comprehensive and precise statutory scheme clearly delineating specific instances in which the public may be charged an amenity fee for use of the National Forests, and other public lands, and quite plainly prohibiting the agency from establishing any system which requires the public to pay for parking or simple access to trails or undeveloped camping sites.

Regarding the use of HIRAs to collect fees, the Judge wrote:

Although the Forest Service may create HIRAs, the Forest Service's determination that charging a recreational amenity fee anywhere within the Red Rock HIRA is authorized by the FLREA because the entire HIRA is an "area" where such a fee may be charged is contrary to the clear statutory language of the FLREA.

After dismissing the my citation, the judge noted that his decision did not prevent the Forest Service from requiring a Red Rock Pass at those locations which contained the required amenities, for the users of those amenities.

The Forest Service may file an appeal of Judge Aspey's decision, so a final ruling might not have been issued yet for my case. What is certain, however, is that six years after the passage of the FLREA, the Forest's Service's use of the Red Rock HIRA to collect fees from hikers is finally getting its day in court.

The court documents from both parties in this case, as well as the judge's decision, are available online at www.westernslopenofee.org. This site also has documents from other cases, as well as links to the FLREA and other laws, and the Forest Service's Interim Implementation Guidelines. To just read the judge's decision, click here: [US v Smith Decision.pdf](#)