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Judge  
rules  
against  
Red  
Rock  
Pass

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Friday, 01 October 2010 00:00

A Sedona hiker who fought a citation for not having a Red Rock Pass on his vehicle has thrown the program into legal limbo.

U.S. Magistrate Judge Mark E. Aspey issued a 33-page ruling Sept. 14 which drastically limits where a Red Rock Pass is needed.

Aspey ruled the pass is not needed at undeveloped locations — those lacking six key elements: designated developed parking; a permanent toilet facility; a permanent trash receptacle; an interpretive sign, exhibit or kiosk; picnic tables and security.

On Nov. 2, Sedona hiker James T. Smith parked his vehicle near the Vultee Arch Trailhead off Dry Creek Road northwest of Sedona, hiked into the wilderness and camped overnight.

“The trash receptacle closest to the Vultee Arch Trailhead parking area is approximately 10 miles away and the closest toilet facility is approximately seven miles away,” Aspey wrote.

Finding a citation on his vehicle the next day, Smith chose to fight the \$55 fine. Similar fines had been challenged before in civil court, but Smith’s refusal to pay made the citation criminal and the U.S. Forest Service fined him \$100.

“After I got the citation, I went online and read the exact legislation again. I was surprised that the language didn’t square with the legislation,” Smith said. He chose to fight the fine because without several amenities, he said he felt a judge would not rule that he was in violation of the law.

Smith found the Western Slope No-Fee Coalition had been fighting some of the 90 similar programs nationwide. He contacted it for some legal advice and then filed a motion to dismiss.

“I had read the new legislation and the different provisions about hiking and camping,” Smith said. “I had noticed that the Forest Service had not taken down the signs.”

On Dec. 8, 2004, Congress passed the Federal Lands Recreation Enhancement Act, which specifically repealed the 1996 Recreation Fee Demonstration Program — the congressional authorization for the Red Rock Pass.

The FLREA established a fee could be charged if a High-Impact Recreation Area had the six developed amenities but other areas were not subject to the fee.

USFS had designated the 160,000-acre Red Rock Ranger District a HIRA because the amenities are located at locations within its boundaries.

Aspey ruled the USFS had improperly defined a HIRA and had also neglected to seek public input on what defined a HIRA around Sedona.

The USFS could not arbitrarily define an “area” as vast at the Red Rock Ranger District, Aspey wrote. By making Smith’s citation criminal, which is only the court’s right to determine, Aspey wrote, the USFS’ definition of “area” was open to examination.

“Over five years, there is no evidence in the record that a Resource Advisory Committee was consulted or that public input was otherwise sought in the implementation of the plan to charge visitors the recreation amenity fee,” Aspey wrote.

“However, dismissing this citation is not the death knell of the Red Rock Pass program,” Aspey concludes. Although the USFS may create HIRAs, the vast Red Rock HIRA is clearly contrary to the FLREA language.

“At this point we recognize the decision about the Red Rock Pass and HIRA,” said Connie Birkland, Red Rock Ranger District public affairs specialist. “We will be reviewing how the HIRA is being managed and what we can do differently to be in accordance with the regulations. We will be communicating with the Arizona Recreation Resource Advisory Committee some time in the next few months.”

Birkland said a decision to appeal is still being considered.



Last Updated on Friday, 01 October 2010 10:45