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Red Rocks pass scope reduced

By Cyndy Cole

It's official: The Coconino National Forest can't require a Red Rocks pass just to access a trailhead or park along the road in Oak Creek Canyon.

National officials said Thursday they are not appealing a month-old decision by U.S. Magistrate Judge Mark E. Aspey in Flagstaff that found it illegal to charge for parking or general access to the forest in parts of the Red Rocks Ranger District near Sedona.

"We're taking the judge's ruling seriously. We're reviewing the Red Rocks Pass program right now," said Brady Smith, spokesman for the Coconino National Forest.

He said it was likely in most cases that Forest Service law enforcement officers would avoid writing citations for people with passes and parked near either remote trailheads or forest areas lacking facilities like restrooms and signs.

Aspey's decision is limited to the local forest, but it could serve as case law for other public lands cases.

Aspey ruled on Sept. 14 in favor of a Sedona hiker and backpacker, Jim Smith, who had parked at the trailhead for Vultee Arch, gone backpacking, and returned to find a ticket on his vehicle.

Rather than pay the ticket, he opted to fight it, relying on other legal cases and help from a national advocacy group that opposes fees for access to public lands.

CONGRESSIONAL PROHIBITION

Aspey agreed with Smith, saying Congress had specifically prohibited the Forest Service from charging a fee to people simply hiking in the forest at large, including anywhere within 160,000 acres of Coconino National Forest near Sedona.

The agency could legally charge fees where it provided all of these amenities: parking, toilets, trash cans, exhibits, picnic tables and security, Aspey found.

He found the agency violated both its internal guidelines and laws requiring opportunities for public comment in its enforcement of the Red Rock pass after federal law had changed.

"I'm very pleased. I think the judge's opinion was comprehensive and well-written. It didn't appear to me to offer grounds for the Forest Service to appeal," Smith said Thursday.

He wondered whether it could open the door for dropping the pass even at the more visited trailheads.

"... If a person was to park near a trailhead with amenities but wasn't using any of them, would the Forest Service have to prove that they were using them?" to require a pass, he

wondered.

Kitty Benzar, president of the Western Slope No-Fee Coalition, applauded the Forest Service's decision not to appeal the case.

"That's great news for visitors to the Coconino National Forest and all the other National Forests and BLM public lands nationwide where fees are being charged for access to undeveloped backcountry," she said. "Jim Smith is a true American hero, and I salute his courage and persistence."

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What the law says, in part

Federal Lands Recreation Enhancement Act

The Secretary shall not charge any standard amenity recreation fee or expanded amenity recreation fee for federal recreational lands and waters administered by the Bureau of Land Management, the Forest Service, or the Bureau of Reclamation under this chapter for any of the following:

- Solely for parking, undesignated parking, or picnicking along roads or trailsides.
- For general access unless specifically authorized under this section.
- For dispersed areas with low or no investment unless specifically authorized under this section.
- For persons who are driving through, walking through, boating through, horseback riding through, or hiking through federal recreational lands and waters without using the facilities and services.
- For camping at undeveloped sites that do not provide a minimum number of facilities (as described further).
- For use of overlooks or scenic pullouts.

More from ruling of Mark E. Aspey, U.S. magistrate judge, Flagstaff

"Mr. Smith's use of the National Forest was limited to driving to and from a parking area on a dirt Forest Service road, overnight parking at an undeveloped dirt parking area, i.e., there were no toilet facilities, picnic tables, or trash receptacles at the parking area, and hiking into the forest on a trail, and camping for one night in a non-developed, dispersed site. The government argues that the collection of a recreation amenity fee is authorized because the Vultee Arch Trailhead is within an 'area' where an amenity fee may be charged pursuant to

the authority of the (federal law). The Court concludes that this is not a permissive construction of the relevant statutory language..."

"Congress expressed a manifest intent in the FLREA that a fee not be charged solely to park on the National Forest, or at a site where the six specific listed 'amenities' were not found."

"The very plain language of the statute prohibits the Forest Service from charging a fee for entering, i.e., accessing, a national forest. The statute also clearly and specifically prohibits charging an amenity fee solely for parking a vehicle in an undeveloped parking lot. It is apparent that Mr. Smith would not have received a ticket had he not parked a vehicle, i.e., had a friend delivered him to the trailhead and retrieved him the following day. Accordingly, what Mr. Smith received was actually a ticket for parking, clearly

prohibited by the plain language of the statute."

"The Forest Service has interpreted (the law) as allowing the agency, in the Red Rock (high-impact recreation area), to combine multiple 'areas' with or without amenities if, cumulatively, all required amenities can be found in the area, notwithstanding the size of the area or how far a visitor might have to travel to avail themselves of the amenity. This is not persuasive logic ... The trash receptacle closest to the Vultee Arch Trailhead parking area is approximately 10 miles away and the closest toilet facility is approximately 7 miles away."

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