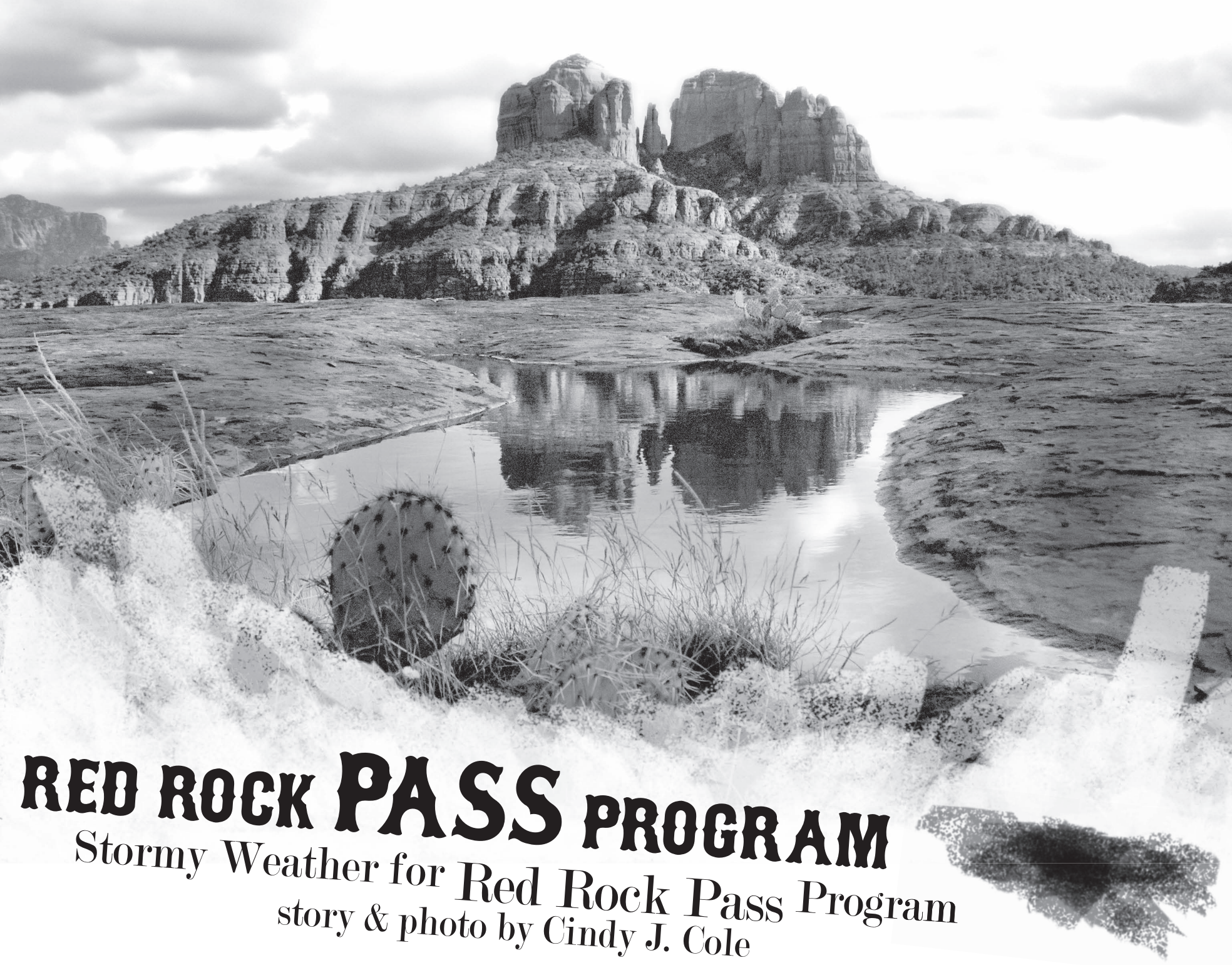

RED ROCK PASS PROGRAM

Stormy Weather for Red Rock Pass Program

story & photo by Cindy J. Cole

Since 1996, anyone wanting to enjoy the forestlands surrounding Sedona has had to pay a fee for the privilege. Parking just about anywhere in the Red Rock Ranger District of the Coconino National Forest requires a **Red Rock Pass** to be displayed in the windshield of your car. A recent court decision has called this fee program into question and the future of the Red Rock Pass is uncertain.

In September 2010, **Jim Smith**, a Sedona resident whose car was ticketed for failing to display a Red Rock Pass while he was backpacking overnight in the **Vultee Arch** area of West Sedona, won his case against the **United States Forest Service.** The court dismissed his ticket and, in his decision, US Magistrate Judge **Mark E. Aspey** of Flagstaff, questioned the validity of the current Red Rock Pass program.

The **Recreational Fee Demonstration Program** was passed by Congress in 1996. This new law gave the USFS authority to require fees for use of forestlands for the first time — and the Red Rock Pass program was born. In Sedona, it meant that anyone who parked on forestlands to go hiking or engage in any other recreational activity would have to pay a fee. This new program was controversial and raised questions throughout the public lands system. In 2002, the Sedona City Council passed a resolution asking the Forest Service to repeal the RFDP.

In 2004, Congress did exactly that. Well, almost. The **Federal Lands Recreation Enhancement Act** (FLREA) of 2004 was passed with the intention of repealing the fee demo program and placing more stringent and specific requirements on the types of public lands that could be subject to fees. However, in Sedona the Red Rock Pass program continued unchanged.

In the Smith case, Jdg. Aspey pointed out that, in its current form, the Red Rock Pass is in violation of FLREA. In his decision, Jdg. Aspey wrote "the FLREA explicitly repealed the Fee Demo Program in order to address criticisms of that program. Nonetheless, the result in the Red Rock Ranger District of the Coconino National Forest has been to maintain the same fee system as that in place under the Fee Demo Program."

The Smith decision also calls into question the Forest Service policy that designates **High Impact Recreation Areas** (HIRAs) to justify fees in areas otherwise not in compliance with FLREA. There are 96 HIRAs currently in the USFS system nationwide. The Red Rock Ranger District of the Coconino National Forest used this policy to require fees in the vast 160,000-plus acres of forest that surround the City of Sedona, the largest contiguous piece of land in the agency's system to be named a HIRA.

Jdg. Aspey also wrote: "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."

The USFS decided not to appeal the Smith decision and has begun the process of reexamining the implementation of use fees throughout the public lands managed by the agency. And, for the first time, the USFS is seeking public input with regard to land use fees and the establishment of HIRAs. As with the original fee demonstration program, Sedona is once again in the national spotlight and at the forefront of setting policy in forests throughout the country.

On March 1, 2011, the USFS held a "Work Group" meeting at Sedona Red Rock High School to begin to address the issues raised by the US Federal Court decision in *US v James T. Smith*. It is clear the Red Rock Pass is in need of revision. What direction that revision will take is still being examined.

Though not well publicized by the USFS, approximately 50 people attended the work group meeting on March 1. A grassroots campaign on Facebook helped to get the word out and a few other local groups, like **Keep Sedona Beautiful**, notified their membership of the meeting. In addition to USFS personnel and other locals, **Kitty Benzar** of the **Western Slope No Fee Coalition** was present, as was Sedona resident Jim Smith.

Many locals recognized **Heather Provencio**, District Ranger of the Red Rock Ranger District and **Jennifer Burns**, the Recreation Staff Officer. However, there were a number of unfamiliar faces apparently representing the Forest Service. It was revealed the meeting would be facilitated by the Forest Service's "Enterprise Team" — an internal team of consultants used for "business intervention."

Attendees were asked to sit at tables in small groups and each group was assigned a consultant from the Enterprise Team. There were a total of eight groups. Prior to engaging in discussion within each group, a member of the team gave some introductory instructions and asked the audience what they anticipated from the meeting and interactions. Several participants expressed their expectation that the USFS be

required to obey Federal law when rewriting fee policies.

While the agency facilitators stated again and again that the purpose of the meeting was to allow the public a chance to be heard, it quickly became clear certain topics would not be open for discussion. The first topic to be "tabled" by the USFS was the issue of private management of public lands.

Questions were raised, and resisted by the USFS, early in the meeting about the use of concessionaires to manage forestlands. In the days just prior to this meeting, locals who live near the **Crescent Moon Ranch Recreation Area** (CMR) had experienced a sudden shift in practice that resulted in conflict with the "hosts" at that site. Crescent Moon Ranch is one of three recreation areas in the Red Rock Ranger District that are managed by a private company, **Recreation Resource Management**, under a Special Use Permit issued by the USFS (Grasshopper Point and West Fork are the others).

Without any prior notice, people walking through the CMR area were suddenly being questioned by the site hosts about whether they were parked in the parking lot and had paid an entry fee. Residents of **Red Rock Crossing Village**, a mobile home park situated directly across the road from Crescent Moon, and other surrounding areas had historically been permitted to walk through the CMR area to access non-fee forest lands on the other side of the fee area without being questioned or having a fee demanded of them. This right of passage is clearly in compliance with REA and residents contacted the USFS to determine why the change had taken place.

At the March 1 meeting, agency officials made it clear they did not want to discuss the concessionaire issue. It was suggested anyone with questions on this topic could contact Ms. Burns at another time. Ironically, one of the six scenarios the USFS presented as alternatives to the current Red Rock Pass program would turn all-day use fee areas over to private management.

After some resistance to the idea that the concessionaire issue was not relevant to the meeting agenda, meeting participants were directed to turn their attention to their individual group and the facilitator that was sitting at their respective tables.

The first question posed to each group was "what do you value about the Red Rock Pass program?" Many felt this question to be misleading and there was definitely an air of distrust amongst some of the local residents who were present. One participant called the meeting "window dressing." At the first suggestion by attendees that the relevant law be made clear to the audience before the proposed changes were introduced, the meeting was adjourned for a break.

Following the intermission, Ms. Provencio addressed the group. She explained that there were six proposals that had been developed by the USFS. "Is there a way to reconfigure the Red Rock Pass area? We want to hear from you," Ms. Provencio said. "I understand there are some differing opinions about compliance with the law. We believe we have come up with some scenarios that comply with the law although many members of the public would disagree on some of those scenarios."

When asked again if the facilitators were going to explain what the law is so that participants could be better informed when considering the proposals, chaos broke out in the room.

Forest Service officials spent the next five minutes arguing with the group about having the relevant excerpts of the law read aloud. Copies of the excerpts had been distributed by an anonymous source at the start of the meeting. The overwhelming majority of participants wanted it read but Ms. Provencio suggested, "If you want to talk to me afterwards, please do that. I would recommend that, if people want to get online and read that law, please do that."

The USFS facilitator identified only as Rachel stated, "This is a little disruptive."

One participant suggested, "If you want to go into a corner with some friends and read the law, then fine. But there are those of us who have perused the law and would like to move forward with the sharing of ideas."

Another pointed out that, "In the amount of time that has been spent avoiding having the law read, it could have been done and we could be moving forward."

Rachel stated flatly, "We are not going to read the law here tonight."

Next, Ms. Provencio was asked if people were still receiving tickets in places where the six amenities required by law are not present, as outlined in the *Smith* case, Ms. Provencio reluctantly replied, "no."

However, review of the Red Rock Ranger District's current enforcement policy shows that this is not the case. While Ms. Provencio said, "we're taking a light law enforcement approach and leaning more on education," the district's website, ***redrockcountry.org***, shows that enforcement is still occurring at many locations that clearly do not have the required amenities.

It states: *Until the Red Rock Pass Program is changed, the Forest Service* **will** *enforce recreation fees at: Palatki, Honanki, and V Bar V Cultural Sites. Oak Creek Canyon. Sites along Highway 179 between the Village of Oak Creek and the Town of Sedona. Long Canyon, Boynton Canyon, Doe, Bear, and Aerie Trailheads along the paved Boynton Pass Road. Huckaby, Soldiers Pass, Jordan, Thunder Mountain, Broken Arrow, Cathedral, and Airport Mesa Trailheads near the Town of Sedona.*

Finally, in a skilled move to prevent further debate on the issue of reading the law aloud (The excerpts of the law can be read below), agency officials guided the audience back to their small group facilitators and passed around hand-outs that described the six proposed scenarios for revamping the Red Rock Pass program. Details of the scenarios can be found at ***redrockcountry.org/passes-and-permits/rrp-change/scenarios.shtml***.

In summary, the six scenarios presented by the USFS are:

Scenario 1 – No changes to the current Red Rock Pass area and system.

Scenario 2 – Elimination of all day use fees in the Red Rock Ranger District.

Scenario 3 – Fees only in areas that have the REA required amenities.

Scenario 4 – Smaller disconnected multiple fee areas.

Scenario 5 – One smaller fee area with a few stand-alone sites.

Scenario 6 – Smaller disconnected multiple fee areas managed by a concessionaire.

Upon further examination, it becomes clear the only scenarios in compliance with Federal Law are 2 and 3. While many participants supported Scenario 2, the complete removal of all Day Use fees, a number of attendees expressed concern that the loss of revenue from the Red Rock Pass would result in more damage to natural and cultural areas, abuse of the land, and more trash.

Others pointed out that fees tend to reduce the feeling of ownership in visitors and locals alike which, in turn, decreases stewardship. Paying a fee eliminates personal responsibility and promotes the philosophy that "someone else" will take care of things like garbage left at trailheads where no collection bins are provided.

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RED ROCK PASS

Scenario 3 received support from some participants while many had reservations about the number of sites indicated by this proposal. The USFS designates 19 locations where it deems a fee could be charged. Of those sites, only 2 or 3 (not including the 3 sites currently managed by a concessionaire) already have the six amenities required under REA.

All other sites would have to be developed in order to bring them into compliance. A few sites would only require the addition of one or two amenities like interpretive signs or security. Most of the named sites would require much more. More importantly, the USFS still needs to figure out how to accommodate visitors to any of these sites whose use is of a type for which fees are specifically forbidden such as parking, access to backcountry, scenic overlooks, and passing through without using amenities.

The only other proposal that received a small amount of support was Scenario 5. Some meeting participants felt this option would allow the continued collection of fee revenue using a simplified system in a more limited area.

One of the best received alternative proposals offered by several of the meeting attendees was to make the entire fee system voluntary. It was suggested donation boxes be placed at most trailheads and visitors be offered the opportunity to make a voluntary financial contribution for use and appreciation of the land.

Despite the agency officials' resistance to having the Federal Law read out loud during the meeting, the discussion surrounding this issue definitely had an impact.

One Sedona resident who attended the meeting with the intention of supporting the Red Rock Pass had at least a small change of heart by the time the meeting was over. Toward the end, she stated that she supported the fee program because she felt that the revenue it brings in is important to preserving the beauty and integrity of the forest lands that surround Sedona.

However, she pointed out that she had no idea there were legal issues involved with the collection of fees in the Red Rock Ranger District until the March 1 meeting. She felt it important those issues be made public and discussed thoroughly before any final decisions are made.

The USFS will hold a second "Open House" meeting on March 24. In addition, the comment deadline has been extended until April 15. If you would like to submit your comments on this issue, call 928/203-7500 or email ***comments-southwestern-coconino-redrock@fs.fed.us*** with "Red Rock Pass Change" in the subject line. You can also use the online form at ***fs.fed.us/r3/coconino/contact/redrock-index.shtml***.

16 U.S.C. 6802

THE FEDERAL LANDS RECREATION ENHANCEMENT ACT [EXCERPTS]

Subsection (d) Limitations on Recreation Fees

(1) PROHIBITION ON FEES FOR CERTAIN ACTIVITIES OR SERVICES- 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 Act for any of the following:

(A) Solely for parking, undesignated parking, or picnicking along roads or trailsides.

(B) For general access unless specifically authorized under this section.

(C) For dispersed areas with low or no investment unless specifically authorized under this section.

(D) 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.

(E) For camping at undeveloped sites that do not provide a minimum number of facilities and services as described in subsection (g)(2)(A).

(F) For use of overlooks or scenic pullouts.

***Subsection (f) Standard Amenity Recreation Fee - Except as limited by subsection (d)**,*

the Secretary may charge a standard amenity recreation fee for Federal recreational lands and waters under the jurisdiction of the Bureau of Land Management, the Bureau of Reclamation, or the Forest Service, but only at the following:

(1) A National Conservation Area.

(2) A National Volcanic Monument.

(3) A destination visitor or interpretive center that provides a broad range of interpretive services, programs, and media.

(4) An area—

(A) that provides significant opportunities for outdoor recreation;

(B) that has substantial Federal investments;

(C) where fees can be efficiently collected; and

(D) that contains all of the following amenities:

(i) Designated developed parking.

(ii) A permanent toilet facility.

(iii) A permanent trash receptacle.

(iv) Interpretive sign, exhibit, or kiosk.

(v) Picnic tables.

(vi) Security services.

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Thurs. Apr. 07 8PM
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