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Fee Flurry

A long and winding court case involving Mount Lemmon charges gets even longer

By TIM VANDERPOOL

Like the long and winding road to Mount Lemmon, a court flap over fees for visiting those slopes seems endless. The latest flurry occurred in January, when a U.S. District Court judge reversed an earlier ruling and upheld the widely despised $5 tariff for making that drive.

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Husband-and-wife team Gaye Adams and Greg Lewis are spearheading the Arizona No Fee Coalition's efforts to fight fees on Mount Lemmon.

All this controversy swirls around an unlikely heck-raiser by the name of Christine Wallace. By weekday, Wallace is a Tucson legal secretary. But on weekends, she's an avid hiker and Mount Lemmon devotee. It was on that mountain in September 2005 that she was fined for not paying the $5. (See "Fee Fight," Oct. 12, 2006, and "Backcountry Shakedown," Feb. 16, 2006.)

It was the second time in weeks that Wallace had received such a ticket. But she refused to pay, arguing that she shouldn't be charged for simply taking a walk. And that refusal has landed her in court.

According to Wallace's backers, folks using undeveloped areas on the mountain are exempt from fees, as intended by Congress under the Federal Lands Recreation Enhancement Act. Passed in 2004, the law allows the Forest Service only to charge for using areas with improvements, such as trash cans, picnic tables, restrooms or information kiosks. But a strict interpretation says fees can't be charged just for parking beside the road, as Wallace did.

To get around those restrictions, the Coronado National Forest deemed the final 28 miles of roadway to Mount Lemmon--and a half-mile on each side--as a "High-Impact Recreation Area," or HIRA, and pronounced it a fee area.

Critics charge that Congress created the federal Recreation Act specifically to bar the Forest Service from such fee-gathering tactics. But Wallace's case is even more specific:

Assuming that HIRAs are here to stay, where within them can the Forest Service appropriately charge fees?

So far, two legal decisions in this case are polar opposites. In September, U.S. Magistrate Judge Charles Pyle dismissed charges against Wallace, noting that the federal Recreation Act specifically prohibits fees for "road or trailside picnicking, camping at undeveloped sites, for using a trail or for trailside parking."

But the Forest Service appealed, and Pyle's decision was reviewed by U.S. District Judge John Roll. Unlike Pyle, Roll deferred heavily to the Forest Service approach of morphing unimproved areas into HIRAs. Roll wrote that charging fees solely for areas with kiosks, potties and designated parking "would create tremendous enforcement problems for the Forest Service."

With all of its meanderings, Wallace's case has gained national significance. And the stakes are high: When the Recreation Act replaced--and restricted--another temporary but long-running fee program, 435 spots were removed from the Forest Service's 4,505 fee sites across the country.

In turn, it's not hard to understand why the Forest Service wants to staunch that wound. The U.S. General Accounting Office found that fees have earned more than $900 million since their 1996 inception, and the Santa Catalina Mountains--including Sabino Canyon--now earn up to $700,000 annually. That's a lot of money for an agency perennially underfunded by the president and Congress.

Most agree that the Forest Service needs better funding. But charging the public to fill that revenue gap is wrongheaded, say critics like Greg Lewis. Along with his wife, Gaye Adams, Lewis has fought the program on behalf of the Arizona No Fee Coalition.

He believes the current $5 Mount Lemmon fee was purposely set low, to gain public compliance before rates climb. "You hear the arguments all the time. Someone will say, 'What's wrong with these people, arguing about a $5 fee and making such a big deal?'

"Well, today, you have rather innocuous fees, which many consider just a nuisance," he says. "But once the camel's nose is in the tent, it's impossible to keep the rest of the camel from entering as well."

Lewis calls it part of a larger crusade to commodify public preserves. "There's lots of money to be made on public lands, especially if we view them as a recreational resource and not as a spiritual resource. If the recreation industry is successful at having people defining themselves by their recreation--as a rock-climber or a hiker or an off-road user--then it's really easy for private interests to take our public lands and sell them back to us as value-added recreation products."

Fees dovetail perfectly into that plan. But the Chris Wallace case may determine how far it's allowed to preceed. Still, that battle doesn't come cheap: Lewis and other anti-fee

activists are scrambling to fund expenses for Mary Ellen Barilotti, the Oregon lawyer handling Wallace's case pro bono.

Like the others, Barilotti is disappointed that the case drags on. And she calls Judge Roll's decision an unwelcome twist. While Magistrate Pyle went to congressional intentions behind the restrictive Recreation Act, Judge Roll "seemed to attempt to find a basis for upholding (the Forest Service's) practice," she says.

Traditionally, federal agencies are given broad deference in administering federal laws. But Barilotti says such deference should be reined in when there's a potential for jail time. "I don't believe the law authorizes a judge to defer to an agency's interpretation of a statute that same agency administers--not when there's a criminal activity attached."

Beyond all this legalistic minutia, she says the bottom line remains clear: Lawmakers never meant for every person entering public land to pay up. "Congress was well aware that people use cars to get to the forest. People don't walk into national forests."

That means they're going to park somewhere. And if it's beside the road, as with Christine Wallace, they shouldn't be charged a fee--or charged with a crime. But instead, Roll lumped the whole area together under a single HIRA umbrella. "He said Congress must have meant you can combine these areas," Barilotti says. But the law "doesn't say that anywhere."

She's since submitted a motion asking Roll to reconsider. But few expect him to reverse course. And that means the case will likely go back to Judge Pyle and a jury trial.

Therein lies the next curve on this long and winding road. But Christine Wallace says she's just getting warmed up--and predicts that her trial will be short. "I assume I'll be found guilty. I've already admitted all the facts. I was there; I did it. What more is there to do?"

If and when she is found guilty, the case will then be appealed to the 9th U.S. Circuit Court of Appeals. And millions of forest users just like Christine Wallace will be watching very closely.