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OPPONENTS HAVE NO PLANS TO DROP THE CASE

Forest Service Wins Next Round on Mount Lemmon Case

By Bill Schneider, 9-20-07

Goliath has won the next round in the David-and-Goliath battle going on down in Tucson, and the court decision should send a chill down the spine of anybody who uses public land for outdoor recreation.

On September 6, U.S. District Judge John Roll convicted Christine Wallace of using public land without paying, and he was quite “nasty” about it, according to Wallace’s supporters.

“It was no surprise that she was found guilty,” Kitty Benzar of the [Western Slope No-Fee Coalition](#) told *NewWest.Net* in an interview today. “The surprise was how nasty he was about it. He (the judge) treated her like a low-life criminal.”

Wallace received the maximum fine, \$100, and according to Benzar, “if she goes up there (Mount Lemmon) again and parks along that state highway and goes hiking on federal land, she could go to jail for six months.”

And it sounds like that’s what could happen if the case was heard in Roll’s court.

“He (Roll) was very favorable to the prosecution,” she said. “He didn’t need to be that nasty about it.”

To get background on the recreational fee issue, go to [NewWest.Net’s Recreation Fee Chronology](#).

But briefly, Congress attached a rider on a must-pass spending bill in 2004 and the Federal Lands Recreation Enhancement Act (FLREA) became the law of the land without a congressional vote and minimal public input. That’s one reason fee opponents, people who believe public lands are a free tradition, call it Recreational Access Tax (RAT).

As background on [this landmark case](#), Wallace received two tickets for failure to pay. On the first occasion, she parked her car in front of a campground that had been closed for a long time and went for a hike, and when she came back, she found a ticket under her windshield wiper. On the second occasion, she parked in an unpaved pull-off along the state highway and was preparing to go hiking when a Forest Service ranger confronted her and issued her a second ticket.

She refused to pay both tickets, and the Forest Service (FS) dragged her into court to collect the \$5 fees. She won her initial court case, but the FS appealed it to Roll's court.

This background is important to understand the magnitude of what's at stake. This case could bring down FLREA, which is why the FS is bringing out the big guns. Even a partial loss for the FS could radically change how the law is enforced.

Right now, enforcement of the FLREA is easy. All the FS has to do is send around an entry level employee or even a volunteer to parking lots or to drive along roads in any national forest and to put tickets on vehicles without a pass displayed. Not displaying a pass presumes the owner of the car is guilty along with all people associated with the car. "They can even ticket passengers and Budget Rent-a-Car," Benzar pointed out.

In another unpleasant surprise in this case, the FS dropped charges on the first citation a few days before the case was heard and only prosecuted on the second one where the ranger had actually seen Wallace park her car. Benzar says this is most upsetting because her group wanted "to find out if the FS could enforce FLREA in this manner" but she knew the FS didn't want to take a chance that they would lose the current easy enforcement methods.

"If they (FS) would have tried to prosecute on the first ticket, we could have truly explored if the law was being enforced in line with the statutes," Benzar said. "If they (FS) would have lost that part, they couldn't run around putting tickets on cars. They would actually have see somebody parking and walking into the woods. They'd have to act like any other law enforcement person and actually investigate and prove a crime was committed."

Benzar says her group will probably appeal this decision, "although our legal strategy isn't finalized, but we definitely aren't letting this drop, believe me," she emphasized. The next step would probably be the Ninth Circuit Court in San Francisco where the FS has a dismal losing record.

Money is one problem, of course, she explained. Citizens fighting the incredible power of the federal government is always tough even with a winnable case.