

District Court <u>Denver</u> County, Colorado Court Address: 1437 Bannock Street, Room 256 Denver, Colorado 80202		
Plaintiff(s): Colorado Off-Highway Vehicle Coalition, a Colorado nonprofit corporation; Lyle Borders; Jennifer L. Dent; West Slope ATV Association, a Colorado nonprofit corporation; Trails Preservation Alliance, a Colorado nonprofit corporation; Wheel Jeep Club, a Colorado not-for-profit organization; Timberline Trailriders, Inc., a Colorado nonprofit corporation; Thunder Mountain Wheelers, a Colorado nonprofit corporation; Colorado Motorcycle Trail Riders Association, Inc., a Colorado nonprofit corporation; San Juan Trail Riders, a Colorado nonprofit corporation v. Defendant(s): Colorado Board of Parks and Outdoor Recreation		▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): James S. Witwer; Ema L. G. Schultz Trout, Raley, Montano, Witwer & Freeman P.C. 1128 Lincoln Street, Suite 1600 Denver, Colorado 80203 Phone Number: 303-861-1963 E-mail: jwitwer@troutlaw.com, eschultz@troutlaw.com FAX Number: 303-832-4465 Atty. Reg. #: 19482; #40117		Case Number: 10 CV Division Courtroom
DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT		

- This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases.
- Check the boxes applicable to this case.
  - ☒ Simplified Procedure under C.R.C.P. 16.1 applies to this case because this party does not seek a monetary judgment in excess of \$100,000.00 against another party, including any attorney fees, penalties or punitive damages but excluding interest and costs and because this case is not a class action or forcible entry and detainer, Rule 106, Rule 120, or other expedited proceeding.
  - ☐ Simplified Procedure under C.R.C.P. 16.1, does not apply to this case because (check one box below identifying why 16.1 does not apply):
    - ☐ This is a class action or forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, or
    - ☐ This party is seeking a monetary judgment for more than \$100,000.00 against another party, including any attorney fees, penalties or punitive damages, but excluding interest and costs (see C.R.C.P. 16.1(c)), or
    - ☐ Another party has previously stated in its cover sheet that C.R.C.P. 16.1 does not apply to this case.
- ☐ This party makes a Jury Demand at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: Aug. 13, 2010

Ema L. G. Schultz  
 Signature of Party or Attorney for Party

NOTICE	
✓	This cover sheet must be filed in all District Court Civil (CV) Cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.
✓	This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.
✓	This cover sheet shall not be considered a pleading for purposes of C.R.C.P. 11.

District Court Denver County, Colorado 1437 Bannock Street, Room 256 Denver, Colorado 80202	
Plaintiff(s): Colorado Off-Highway Vehicle Coalition, a Colorado nonprofit corporation; Lyle Borders; Jennifer L. Dent; Western Slope ATV Association, a Colorado nonprofit corporation; Trails Preservation Alliance, a Colorado nonprofit corporation; Mile-Hi Jeep Club of Colorado, a Colorado not-for-profit corporation; Timberline Trailriders, Inc., a Colorado nonprofit corporation; Thunder Mountain Wheelers, a Colorado nonprofit corporation; Colorado Motorcycle Trail Riders Association, Inc., a Colorado nonprofit corporation; San Juan Trail Riders, a Colorado nonprofit corporation  v.  Defendant(s): Colorado Board of Parks and Outdoor Recreation	▲ COURT USE ONLY ▲
James S. Witwer, # 19482 Ema I. G. Schultz, # 40117 Trout, Raley, Montaño, Witwer & Freeman, P.C. 1120 Lincoln Street, Suite 1600 Denver, CO 80203 Telephone: 303-861-1963 Fax: 303-832-4465 <a href="mailto:jwitwer@troutlaw.com">jwitwer@troutlaw.com</a> <a href="mailto:eschultz@troutlaw.com">eschultz@troutlaw.com</a>	Case Number: 10 CV _____  Division:          Courtroom:
<b>COMPLAINT</b>	

Plaintiffs, The Colorado Off-Highway Vehicle Coalition ("COHVCO"), Lyle Borders, Jennifer L. Dent, Western Slope ATV Association ("WSATVA"), Trails Preservation Alliance ("TPA"), The Mile-Hi Jeep Club of Colorado ("MHJC"), Timberline Trailriders, Inc. ("TTP"), Thunder Mountain Wheelers ("TMW"), Colorado Motorcycle Trail Riders Association, Inc. ("CMTRA"), and San Juan Trail Riders ("SJTR"), by and through their attorneys, Trout, Raley, Montaño, Witwer & Freeman, P.C., hereby state and allege:

## **I. INTRODUCTION**

1. Plaintiffs challenge two recent actions by the Defendant Colorado Board of Parks and Outdoor Recreation (the "Board") that radically alter the award of grants under the Colorado Off-Highway Vehicle Recreation Fund, C.R.S. § 33-14.5-106 ("Recreation Fund"). Meeting in secret, Board members changed the process for reviewing Recreation Fund grant applications, and directed that Recreation Fund grant monies be diverted for non-recreational purposes well beyond those prescribed by the General Assembly. Without prompt judicial intervention, the Board's actions threaten to slash recreation opportunities for the owners of over 120,000 off-highway vehicles who pay into the Recreation Fund each year.

## **II. JURISDICTION AND VENUE**

2. The Court has general jurisdiction over this matter pursuant to Article 6, Section 9 of the Colorado Constitution. The Court also has jurisdiction over this matter pursuant to C.R.C.P. 57 (declaratory judgment), C.R.S. § 24-6-402(9), C.R.S. §13-51-101, et seq., and C.R.S. § 24-4-106(4).
3. The District Court, Denver County, Colorado is the appropriate venue for this action because Defendant's residence is in Denver County. C.R.S. § 24-4-106(4).
4. This Court has jurisdiction to hear and grant:
  - a. Plaintiffs' prayers for declaratory relief under C.R.S. §§ 13-51-101 et seq., 24-6-402(8) and 24-4-106(7), and C.R.C.P. 57
  - b. Plaintiffs' prayers for injunctive relief under C.R.S. § 24-6-402(9) and 24-4-106(7).
  - c. Plaintiffs' prayers for vacation or setting aside of actions of Defendant pursuant to C.R.S. § 24-6-402(8) and 24-4-106(7).
  - d. Plaintiff's prayers for costs under C.R.S. § 13-51-114, and costs and attorney fees under C.R.S. § 24-6-402(9).

## **III. PARTIES**

5. Plaintiff COHVCO is a Colorado nonprofit corporation with approximately 2,000 individual, OHV Club, and business members. COHVCO has worked since 1987 to represent, assist, educate, and empower off-highway vehicle ("OHV") recreationists in the protection and promotion of off-highway motorized recreation throughout Colorado. COHVCO developed, promoted, and assisted in the creation of the Recreation Fund program. COHVCO has received grants from the Recreation Fund for resource

protection and improvement, user education, visitor contacts, planning and travel plan implementation, and equipment since 2005 totaling approximately \$459,049. COHVCO intends to apply for grants from the Recreation Fund in the future.

6. Plaintiff Lyle Borders is a natural person, a citizen of the United States, and a resident of Longmont, Colorado. Mr. Borders is a former United States Army helicopter pilot who served in Vietnam, where in 1971 he was wounded and had his right leg amputated above the knee. Mr. Borders is an outdoor enthusiast who enjoys hunting and camping. Mr. Borders owns and operates an all-terrain vehicle ("ATV"), for which registration fees have been paid into the Recreation Fund, to access and hunt in the woods. Mr. Borders requires use of an ATV to access and enjoy Colorado's great outdoors, including on designated OHV routes on Arapaho, Roosevelt, Grand Mesa, Uncompahgre, and Gunnison National Forests and on public lands administered by the United States Bureau of Land Management ("BLM") in the Grand Junction area. If any of these routes were closed due to the unavailability of adequate funds for route maintenance, Mr. Borders would lose opportunities to engage in outdoor recreation activities. Mr. Borders is a member of the WSATVA and a member of COHVCO.
7. Plaintiff Jennifer L. Dent is a natural person, a citizen of the United States, and a resident of Westcliffe, Colorado. An injury suffered 13 years ago has severely limited her ability to walk and has eliminated her ability to hike. Thankfully, she now rides on an ATV for which registration fees have been paid into the Recreation Fund, to travel into the backcountry areas that would otherwise be totally inaccessible to her. Ms. Dent has been riding on ATVs for approximately two years, including on designated OHV routes on the Rio Grande, Gunnison, Pike, and San Isabel National Forests in Colorado. If any of these routes were closed due to the unavailability of adequate funds for route maintenance, Ms. Dent would lose opportunities to engage in outdoor recreation activities. Ms. Dent is an active member of the Royal Gorge ATV Club and COHVCO.
8. Plaintiff WSATVA is a Colorado nonprofit corporation based in Grand Junction with over 300 members. For 22 years, WSATVA has promoted responsible ATV use as a legitimate family recreational activity on public lands through education of the general public, media, and elected officials. WSATVA also provides search and rescue assistance to Mesa County. WSATVA has received grant money since 2006 from the Recreation Fund for resource protection and improvement, maintenance, education, planning and travel plan implementation, and equipment totaling approximately \$405,450. WSATVA intends to apply for grants from the Recreation Fund in the future.
9. Plaintiff TPA is a Colorado nonprofit corporation focused on preserving motorized, single-track trail riding. TPA received grant money through the Recreation Fund's 2009-2010 grant cycle for trail improvement and enforcement in the San Juan National Forest in the amount of \$160,000. TPA intends to apply for grants from the Recreation Fund in the future.

10. Plaintiff MHJC is a Colorado not-for-profit corporation based in Denver with approximately 200 members. For the last 50 years, MHJC has worked to unite adventure-loving people in worthwhile 4-wheel drive activities; to educate its members in the proper manner of all road driving; to protect and preserve the natural beauty and terrain; and to participate, on a voluntary basis, in search and rescue and other humanitarian missions as the community needs. MHJC received a grant in 2009 from the Recreation Fund for \$110,200 for resource protection and improvement, maintenance, education, visitor contact, planning and travel plan implementation, and signage. MHJC intends to apply for grants from the Recreation Fund in the future.
11. Plaintiff TTI is a Colorado nonprofit corporation based in Steamboat Springs with more than 100 members across northwest Colorado. For the last 35 years, TTI has worked to clear trails and organize events for motorcycle trail riders. TTI has received grant money through the Recreation Fund since 1998 for trail maintenance, management, education, and equipment for the Routt National Forest Trail Crew. TTI has earned "Good Manager" status for the Routt National Forest Trail Crew. Since 2004, TTI has received approximately \$420,000 in grants for resource protection and improvement, maintenance, education, visitor contacts, planning and travel plan implementation, and equipment. TTI intends to apply for grants from the Recreation Fund in the future.
12. Plaintiff TMW is a Colorado nonprofit corporation based in Delta with approximately 210 families and 40 businesses as members. TMW promotes responsible use of public and private lands to foster and provide an attitude of public service, volunteerism, safe riding practices, and rational and environmentally responsible techniques of riding OHVs. TMW has received grant money through the Recreation Fund since 2004 totaling approximately \$127,070 for new trail construction, resource protection and improvement, trail maintenance, education, planning and travel plan implementation, equipment, signage, and work with the Youth Corps. TMW intends to apply for grants from the Recreation Fund in the future.
13. Plaintiff CMTRA is a Colorado nonprofit corporation based in Colorado Springs with more than 100 members. For more than 30 years, CMTRA has been active in trail maintenance of Colorado motorcycle trails in the Pikes Peak and Southern Colorado region, including on the Pike and San Isabel National Forests. CMTRA received grant money through the Recreation Fund for resource protection and improvement, maintenance, education, planning and travel plan implementation, signage, and work with the Youth Corps totaling \$237,020 since 2005. CMTRA intends to apply for grants from the Recreation Fund in the future.
14. Plaintiff SJTR is a Colorado nonprofit corporation based in Durango with approximately 400 members. SJTR is dedicated to promoting the needs and interests of OHV enthusiasts throughout Colorado while preserving the natural beauty of the wild lands and fostering compatibility and courtesy between forest users. SJTR has been awarded

\$40,000 from Recreation Fund program for the 2010-2011 grant cycle for trail maintenance and improvement.

15. Defendant Colorado Board of Parks and Outdoor Recreation ("Board") is a board in the Colorado Department of Natural Resources whose principal address is 1313 Sherman Street, Suite 618, Denver, Colorado 80203. C.R.S. § 33-10-103.
16. The Board's actions complained of herein have caused Plaintiffs to suffer an injury in fact to legally protected interests in the proper administration of the Recreation Fund.

#### **IV. BACKGROUND**

##### The Board.

17. The Board has several duties, including the oversight of the Colorado Division of Parks and Outdoor Recreation ("Division").
18. The Board duties include promulgating rules and administering the parks and outdoor recreation programs established by Articles 10 through 15 and 32, Title 33, C.R.S.
19. The statutory powers of the Board include: "[To] receive and expend grants, gifts, and bequests, including federal funds, made available for the purposes for which the [Parks] board is authorized." C.R.S. § 33-10-107(e).
20. As a board of a state agency, the Board is subject to the requirements of the Colorado Open Meetings Law, C.R.S. § 24-6-402.

##### The Recreation Fund.

21. Since 1971, the Colorado General Assembly has declared that it is "the public policy of this state and among the purposes of this article to: . . . provide for the needs of specialized recreational motor vehicles." C.R.S. § 33-11-102(1); *see also* C.R.S. § 33-11-103(5) (defining "recreation trail" to include "a trail which is used for . . . the riding of motorized recreational vehicles along routes of scenic, natural, historic, geologic, or water-oriented interest").
22. The statute that established the Recreation Fund in 1989 provides:
  - (1) All fees collected from the registration of off-highway vehicles and all fees collected from the sale of off-highway use permits, plus all interest earned on such moneys shall be credited to the off-highway vehicle recreation fund, which fund is hereby created, and shall be used for the administration of this article, for information and awareness on the availability of off-highway vehicle recreational opportunities, for the promotion of off-highway vehicle safety, for the establishment and maintenance of off-highway vehicle routes, parking areas, and

facilities, and for the purchase or lease of private land for the purposes of access to public land for uses consistent with the provisions of this article; however, any moneys collected in excess of four dollars per original or renewal registration shall be used exclusively for direct services and not administrative costs. The general assembly shall make annual appropriations from the off-highway vehicle recreation fund for the purposes enumerated in this subsection (1).

C.R.S. § 33-14.5-106(1).

23. The annual OHV registration fee and off-highway use permit fee is \$25.25, and over 133,000 OHVs were registered or permitted in 2009.

OHV Grant Review and Ranking Subcommittee.

24. The Colorado Recreational Trails Committee (the "Committee") is an advisory committee to the Board. C.R.S. § 33-11-105(1).
25. The Committee makes recommendations to the Board concerning grants from the Recreation Fund. C.R.S. § 33-11-107.
26. The Committee member chosen by the Board to represent OHV interests chairs the OHV Grant Review and Ranking Subcommittee, a/k/a the OHV Grant Selection Subcommittee (the "Subcommittee"). That chairperson previously appointed up to 10 members of the public to serve on the subcommittee who represent organized OHV interests.
27. The Board and Division website (last visited August 11, 2010) states that the Subcommittee "conduct[s] a fair and objective grant review before making recommendations to the State Trails Committee. Public input is solicited as part of the grant review process. Public comment is accepted by e-mails, letters and during public meetings. All OHV applicants are invited to make a presentation to the OHV Subcommittee. Presentations are scheduled in early February. Public comment will be taken after presentations."

Board Member James Pribyl Contacts Prior to March 19, 2010 Board Meeting.

28. On the evening of March 16, 2010, Board member James Pribyl contacted Dean Winstanley, Director of the Division, and Gary Thorson, Assistant Director of the Division, to request additional information concerning what suggested changes to the Recreation Fund that Division staff would present to the Board at its March 19, 2010 meeting.
29. In an electronic mail message to Tom Morrissey, Colorado Trails Program Coordinator, dated March 17, 2010, Mr. Winstanley stated in part that Mr. Pribyl

is very focused on the outcome of this process and is quickly developing his own views on how this should turn out. He very much wants to know where the Parks staff recommendation is at this point. I am not talking out of school to say that I believe he will want to make a pitch at the meeting Friday to the other board members if he does not completely agree with what we are presenting.

March 19, 2010 Board Meeting.

30. After Division staff presented suggestions for modifications to the Recreation Fund grant-making process at the public March 19, 2010 Board meeting, Mr. Pribyl provided an alternative proposal that sought a more aggressive proposal of Recreation Fund grant funds for the next four cycles being dedicated to implementation of the federal management plans, and also called for a more aggressive reformation of the OHV grant (Recreation Fund) program and the Subcommittee.

Board Member Contacts Immediately Following March 19, 2010 Board Meeting.

31. On March 19, 2010, Mr. Pribyl sent an electronic mail message to the remaining Board members and various Colorado state government employees, with the subject entitled "Pribyl OHV Reform Proposal."
32. Mr. Pribyl's March 19, 2010 message stated:

Gentlepeople,  
Happy to walk you thru my rationale here.....[sic]  
Today's debate (and the one yet to come) reminds me of that great quote about democracy: "Free and Fair discussion shall be the firmest friend of truth"  
Tom and Tom: If you can develop more reliable, transparent data about grants dedicated solely and completely to TMP [federal Travel Management Plan] implementation, it will greatly illuminate this discussion.  
Many thanks,  
Jim

33. Attached to Mr. Pribyl's March 19, 2010 message was a document named "OHV Program Reforms – Jpribyl-3-19-10.doc" and entitled "Proposed Revisions to the Colorado OHV Grant Program."

April 28, 2010 Discussion and Electronic Mail Messages Among Board Members.

34. On the morning of April 28, 2010, Mr. Pribyl had a discussion with one or more fellow Board members concerning the Recreation Fund program.
35. Later on April 28, 2010, Mr. Pribyl sent an electronic mail message to Board members Gary Butterworth and Bill Kane, which stated in part:

Gary,

I sent separate msg to all board mbrs [sic] with my response to Dean about the staff draft.

I am including Bill Kane on this em [sic] in hopes that he can offer his wisdom on how to work out of this logjam.

I think we had a worthwhile discussion this am, which I greatly appreciate, and I encourage you to draft an OHV grant policy proposal that:

1) Creates equal scoring and funding opportunity for four outcomes or spending categories:

- a. Trail maintenance and new construction;
- b. TMP Implementation (closures, signage, remediation of closed roads, trails, areas);
- c. Off-Authorized trail Habitat Restoration and Resource Protection;
- d. Education and Enforcement,

2) Requires all applications to satisfactorily demonstrate "Need and Benefit" and "Partnerships, Local Support and Leverage".

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3) Provides a process on OHV grant committee to provide both representation and protection of 'rights of the minority' to non-motorized users and experts on law enforcement, wildlife, fisheries, riparian areas, and sensitive natural resources. . . .

Give me a call 720 888 7328 to discuss, thanks, Jim

36. On May 25, 2010, Mr. Pribyl forwarded his April 28, 2010 message to Messrs. Winstanley and Thorson, with the message: "Here's simple set of principles for OHV grant reform that I sent to Butterworth and Kane April 28."

May 2010 Board Meeting.

37. The Board held a public meeting on May 6 and May 7, 2010.
38. On May 7, 2010, the Board approved a document entitled "Off Highway Vehicle Program Strategic Process" with the goal that the parties involved will work together and the Board would have a recommendation from staff perhaps a week prior to the July [2010 Board] meeting.

"OHV Program Modifications Roundtable" Meeting on June 7, 2010.

39. On June 7, 2010, a meeting of a group termed the "OHV Program Modifications Roundtable" was held at the Bureau of Land Management Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado ("June 7 Meeting").
40. All Board members were invited to attend the June 7 Meeting.
41. Laurie Mathews, a Board member, attended the June 7 Meeting.
42. Mr. Pribyl, a Board member, attended the June 7 Meeting.
43. John Marriott, a Committee member, attended the June 7 Meeting.
44. Gary Buffington, a Committee member, attended the June 7 Meeting.
45. According to Division staff, the goal of the June 7 Meeting was to "seek consensus with the . . . participants in the facilitated roundtable discussions on the following two matters: (1) the OHV grant scoring criteria and (2) the OHV grant review subcommittee composition."
46. Jerry Abboud, Executive Director of COHVCO, had stated his desire to attend the June 7 Meeting to Division staff members on several occasions.
47. On June 4, 2010, Mr. Abboud received a telephone call from Mr. Morrissey, who informed Mr. Abboud that the June 7 Meeting was a closed meeting that he, and other persons not selected for the "Roundtable", would not be permitted to attend.
48. On June 9, 2010, Mr. Thorson sent an electronic mail message to Todd Bryan Ph.D., moderator of the June 7 Meeting; Mr. Winstanley, and Mr. Morrissey ("June 9 Message").
49. The June 9 Message contained an attached document entitled "June 8, 2010 OHV Subcommittee – Proposed Draft Changes" that tracks changes which were discussed at the June 7 Meeting for the Subcommittee composition.

Letter from Mr. Winstanley Concerning Open Meetings Law Compliance.

50. On June 15, 2010, Mr. Winstanley sent a letter to counsel for COHVCO ("June 15 letter").
51. The June 15 letter states in part that COHVCO's counsel correctly asserted "that two members of each body were present and that the presence of two members of the Parks Board and the Trails Committees facially raises issues under the state Open Meetings Laws."

52. The June 15 letter also states in part: "A violation of those laws, if any, associated with the June 7, 2010 Off Highway Vehicle ("OHV") Roundtable work session sponsored by the Parks Board was completely inadvertent in nature."

July 2010 Board Meeting.

53. The Board held a public meeting on July 15 and July 16, 2010.
54. On July 16, 2010, the Board unanimously approved changes to composition of the Subcommittee (the "Subcommittee Changes"). *See* attached Exhibit A.
55. The Subcommittee Changes are substantially similar to those changes shown in the attachment to the June 9 Message.
56. On July 16, 2010, the Board unanimously approved changes to the OHV (Recreation Fund) Project Selection Criteria (the "Selection Criteria Changes"). *See* attached Exhibit B.
57. The Selection Criteria Changes allow Recreation Fund grants to be made for rehabilitation; re-vegetation of trails; closing or rehabilitating off-trail, non-system OHV routes; and route decommissioning and closures.
58. The Selection Criteria Changes allow Recreation Fund grants to be made for monitoring off-trail, non-system OHV routes in compliance with federal Travel Management Plans or Motor Vehicle Use Maps and for utilization of law enforcement to increase compliance with state OHV laws.
59. The Selection Criteria Changes and Subcommittee Changes are effective immediately and will directly affect the next Recreation Fund grant cycle scheduled to begin in Fall 2010.

**V. CLAIMS FOR RELIEF**

**FIRST CLAIM**

**VIOLATION OF COLORADO OPEN MEETINGS LAW, C.R.S. § 24-6-402  
(SECOND MARCH 19, 2010 BOARD MEETING)**

60. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs as if set forth fully herein.
61. On March 19, 2010, potential changes to the Recreation Fund program were matters pending before the Board for future formal action.
62. On March 19, 2010, potential changes to the Recreation Fund program constituted public business.

63. On March 19, 2010, following the conclusion of the public Board meeting held that day, two or more members of the Board convened to discuss potential changes to the Recreation Fund program (the "Second March 19 Meeting").
64. Board members discussed public business at the Second March 19 Meeting.
65. The Second March 19 Meeting was held for the purpose of discussing or undertaking a rule, regulation, or formal action.
66. The Second March 19 Meeting violated the Colorado Open Meetings Law, C.R.S. § 24-6-402 ("OML").
67. No resolution, rule, regulation, ordinance, or formal action of a state public body shall be valid unless taken or made at a meeting that meets the requirements of the OML. C.R.S. § 24-6-402(8).
68. The Subcommittee Changes are the product of discussion and debate at the Second March 19 Meeting, a closed meeting held in violation of the OML.
69. The Selection Criteria Changes are the product of discussion and debate at the Second March 19 Meeting, a closed meeting held in violation of the OML.
70. Plaintiffs are entitled to recover attorney fees and costs, to be paid from a source other than the Recreation Fund, for prevailing on this claim. C.R.S. § 24-6-402(9).

SECOND CLAIM  
VIOLATION OF COLORADO OPEN MEETINGS LAW, C.R.S. § 24-6-402  
(APRIL 28, 2010 BOARD MEETING)

71. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs as if set forth fully herein.
72. On April 28, 2010, potential changes to the Recreation Fund program were matters pending before the Board for future formal action.
73. On April 28, 2010, potential changes to the Recreation Fund program constituted public business.
74. On April 28, 2010, two or more members of the Board convened to discuss potential changes to the Recreation Fund program (the "April 28 Meeting").
75. Board members discussed public business at the April 28 Meeting.
76. The April 28 Meeting was held for the purpose of discussing or undertaking a rule, regulation, or formal action.

77. The April 28 Meeting violated the OML.
78. No resolution, rule, regulation, ordinance, or formal action of a state public body shall be valid unless taken or made at a meeting that meets the requirements of the OML. C.R.S. § 24-6-402(8).
79. The Subcommittee Changes are the product of discussion and debate at the April 28 Meeting, a closed meeting held in violation of the OML.
80. The Selection Criteria Changes are the product of discussion and debate at the April 28 Meeting, a closed meeting held in violation of the OML.
81. Plaintiffs are entitled to recover attorney fees and costs, to be paid from a source other than the Recreation Fund, for prevailing on this claim. C.R.S. § 24-6-402(9).

THIRD CLAIM  
VIOLATION OF COLORADO OPEN MEETINGS LAW, C.R.S. § 24-6-402  
(JUNE 7, 2010 BOARD MEETING)

82. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs as if set forth fully herein.
83. On June 7, 2010, potential changes to the Recreation Fund program were matters pending before the Board for future formal action.
84. On June 7, 2010, potential changes to the Recreation Fund program constituted public business.
85. On June 7, 2010 two or more members of the Board convened to discuss potential changes to the Recreation Fund program (previously defined as the "June 7 Meeting").
86. Board members discussed public business at the June 7 Meeting.
87. The June 7 Meeting was held for the purpose of discussing or undertaking a rule, regulation, or formal action.
88. The June 7 Meeting violated the OML.
89. No resolution, rule, regulation, ordinance, or formal action of a state public body shall be valid unless taken or made at a meeting that meets the requirements of the OML. C.R.S. § 24-6-402(8).
90. The Subcommittee Changes are the product of discussion and debate at the June 7 Meeting, a closed meeting held in violation of the OML.

91. Plaintiffs are entitled to recover attorney fees and costs, to be paid from a source other than the Recreation Fund, for prevailing on this claim. C.R.S. § 24-6-402(9).

FOURTH CLAIM FOR RELIEF  
VIOLATION OF COLORADO ADMINISTRATIVE PROCEDURE ACT,  
C.R.S. § 24-4-106  
(SELECTION CRITERIA CHANGES EXCEED STATUTORY JURISDICTION OR ARE  
OTHERWISE CONTRARY TO LAW)

92. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs as if set forth fully herein.
93. The Board's approval of and/or imminent implementation of the Selection Criteria Changes constitute final agency action.
94. The Selection Criteria Changes constitute an agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy and/or setting forth the procedure or practice requirements of the Board.
95. The Selection Criteria Changes constitute a rule under the Colorado Administrative Procedure Act ("APA"). C.R.S. § 24-4-102(15).
96. The statutorily-enumerated uses for Recreation Fund grants allow for funding of law enforcement activities only to the extent such activities enforce the provisions of Article 14.5 of Title 33, C.R.S., but do not include funding for general enforcement of other state OHV laws, such as C.R.S. §§ 25-12-110, 33-6-124(4), or 33-11-112.
97. The statutorily enumerated uses for Recreation Fund grants do not include rehabilitation, re-vegetation of trails, closing or rehabilitating off-trail, non-system OHV routes, or route decommissioning and closures. C.R.S. § 33.14.5-106(1)
98. The Selection Criteria Changes are a denial of statutory right; in excess of statutory jurisdiction, authority, purposes, or limitations; not in accord with the procedures or procedural limitations of the APA or as otherwise required by law; or are otherwise contrary to law. C.R.S. § 24-4-106(7).
99. The Selection Criteria Changes constitute an unlawful attempt to divert Recreation Fund grant monies for general enforcement of state OHV laws unrelated to enforcement of the specific provisions of Article 14.5 of Title 33, C.R.S.

FIFTH CLAIM FOR RELIEF  
DECLARATORY JUDGMENT  
(SELECTION CRITERIA CHANGES EXCEED STATUTORY JURISDICTION  
UNDER C.R.S. § 33-14.5-106)

100. Plaintiffs incorporate by reference the allegations contained in all preceding paragraphs as if set forth fully herein.
101. The Selection Criteria Changes constitute an unlawful attempt to divert Recreation Fund grant monies for closing or rehabilitating off-trail, non-system OHV routes, route decommissioning and closures, general OHV law enforcement, and other purposes not authorized by the General Assembly.
102. Plaintiffs are entitled to a declaration of the legal scope of Recreation Fund grants to afford them relief from uncertainty with respect to future such grants and the availability of full available funding for needed future trail maintenance and other activities that preserve and enhance motorized recreation in Colorado.

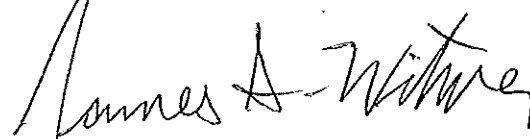
**VI. PRAYER FOR RELIEF**

WHEREFORE Plaintiffs respectfully pray that the Court:

- A. Declare that the Board violated the OML by convening for the Second March 19 Meeting.
- B. Declare that the Board violated the OML by convening for the April 28 Meeting.
- C. Declare that the Board violated the OML by convening for the June 7 Meeting.
- D. Declare that the Selection Criteria Changes exceed statutory jurisdiction and are otherwise contrary to law.
- E. Vacate, set aside and enjoin the implementation of the Subcommittee Changes.
- F. Vacate, set aside and enjoin the implementation of the Selection Criteria Changes.
- G. Order the Board to conduct the timely solicitation and/or review of applications for, and award of, Recreation Fund grants that in no way rely upon the Subcommittee Changes or the Selection Criteria Changes and that fully utilize available monies in the Recreation Fund in fiscal year 2010-2011.
- H. Award Plaintiffs their attorney fees and costs.
- I. Grant Plaintiffs such other and further relief as the Court deems proper.

Respectfully submitted this 13<sup>th</sup> day of AUGUST, 2010

TROUT, RALEY, MONTAÑO,  
WITWER & FREEMAN, PC

A handwritten signature in black ink, appearing to read "James S. Witwer", written over a horizontal line.

James S. Witwer, #19482  
Erna I. G. Schultz, #40117  
1120 Lincoln St., Suite 1600  
Denver, Colorado 80203  
Telephone: 303-861-1963  
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ATTORNEYS FOR PLAINTIFFS

**OHV Subcommittee Makeup~ Proposed Changes  
State Parks Recommendation for Board Action – July 16<sup>th</sup>, 2010**

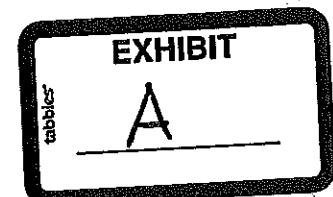
***Any "changes" to the OHV Subcommittee will be addressed through the approval of the State Parks Board Policy, A-104. Board policies require a simple majority vote to pass and, statutorily, do not require a formal public input process.***

**Current Status of Subcommittee**

- One (1) Chairperson who is the motorized designee on the State Trails Committee that is nominated by the motorized community and appointed to the State Trail Committee by the State Parks Board;
- Up to ten (10) subcommittee members – all affiliated with motorized recreation appointed by the Chairperson who serve at the pleasure of the chair; their term on the subcommittee expires with that of the Chairperson;
- Up to Four (4) State Parks Trails Coordinators; and,
- One (1) State Parks Motorized Trails Program Coordinator.
- Total of up to sixteen (16) grant scoring members.

**Proposed Changes**

- All changes will be implemented by September 30, 2010.
- Subcommittee membership would be limited to a total of (13) grant scoring members for the 2010-2011 grant cycle and then twelve (12) for all subsequent OHV grant cycles.
  - One (1) Chairperson who is the motorized or OHV designee on the State Trails Committee
  - Eight (8) motorized affiliates (the number of motorized affiliates will be reduced to seven (7) for all subsequent grant cycles);
  - One (1) non-motorized affiliate who is a State Trails Committee member;
  - Two (2) non-motorized affiliates; and,
  - One (1) multiple-use trail affiliate.
- The non-motorized State Trails Committee delegate to the OHV subcommittee shall be nominated by the State Trails Committee and approved by the Parks Board. The State Trails Committee shall approve by majority vote all other appointees to the OHV subcommittee as proposed by the Chairperson and the non-motorized State Trails Committee delegate.
- The Chairperson shall screen and nominate the eight (8) affiliated OHV subcommittee members. The non-motorized State Trails Committee delegate shall screen and nominate the two (2) non-motorized subcommittee members. The State Parks Director shall screen and nominate the one (1) multiple-use trail member.
- The subcommittee Vice chair shall be elected by a majority vote of the subcommittee.
- Additional "Ex-officio" members shall be added to the OHV subcommittee who have distinct, relevant technical expertise:



**OHV Subcommittee Makeup-- Proposed Changes  
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- One (1) Division of Wildlife biologist expert
- One (1) DOW or State Parks law enforcement expert
- One (1) BLM representative with expertise in Travel Management Plans (TMPs)
- One (1) USFS representative with expertise in Travel Management Plans (TMPs)
- State Parks Trails staff
- The ex-officio members shall serve as resource experts to the OHV subcommittee and shall not rank or formally act on the grant applications reviewed by the subcommittee.
- Succession Plan:
  - In general, each OHV subcommittee member shall be appointed to serve a three year term renewable for an additional term of three years or until the expiration of the OHV Subcommittee Chairperson's term, whichever occurs first.
  - By September 1, 2010, eight (8) of the nine (9) current affiliated OHV subcommittee members shall be retained as requested by the OHV Chairperson. The OHV Chairperson may nominate as many new affiliated OHV subcommittee members as are needed to fill seven (7) of the eight (8) slots designated for affiliated OHV subcommittee members that are vacated prior to the 2010-2011 OHV grant cycle. All new subcommittee members shall be approved and appointed by a majority vote of the State Trails Committee.
  - By September 30, 2010, the two (2) non-motorized affiliates shall be nominated to the OHV subcommittee by the State Trails Committee's non-motorized delegate and approved and appointed by a majority vote of the State Trails Committee.
  - By September 30, 2010, the one (1) multiple-use trail affiliate shall be nominated to the OHV subcommittee by the State Parks Director and approved and appointed by a majority vote of the State Trails Committee.
  - At the end of the 2010-2011 Grant cycle, the terms of three (3) of the eight (8) motorized affiliated OHV subcommittee members and one (1) non-motorized affiliated subcommittee member shall expire. The OHV subcommittee Chairperson and the State Trails Committee non-motorized subcommittee member shall then either reappoint those subcommittee members or nominate replacements for two (2) of the three (3) motorized vacancies that exist and the one (1) non-motorized vacancy, respectively. All new OHV subcommittee members shall be approved and appointed by a majority vote of the State Trails Committee.
  - At the end of the 2011-2012 Grant cycle, the terms of two (2) of the seven (7) motorized affiliated OHV subcommittee members and the one (1) multiple-use subcommittee member shall expire. The OHV subcommittee Chairperson and the State Trails Committee non-motorized subcommittee member must then reappoint those subcommittee members or nominate replacements for any of the three (3) vacancies that exist, respectively. All new OHV subcommittee

**OHV Subcommittee Makeup-- Proposed Changes**  
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members shall be approved and appointed by a majority vote of the State Trails Committee.

- At the end of the 2012-2013 Grant cycle, the terms of three (3) of the seven (7) motorized affiliated OHV subcommittee members and one (1) non-motorized subcommittee member shall expire. The OHV subcommittee Chairperson and the State Trails Committee non-motorized subcommittee member must then reappoint those subcommittee members or nominate replacements for the any of the four (4) vacancies that exist, respectively. All new OHV subcommittee members shall be approved and appointed by a majority vote of the State Trails Committee.

**OHV Grant Scoring Criteria**  
**State Parks Recommendation for Board Action – July 16<sup>th</sup>, 2010**

**PROJECT SELECTION CRITERIA (Exhibit D-1)**

Responsible OHV Management is based upon Engineering, Education, Enforcement and Evaluation (the 4 Es). Describe how your project will utilize the four principles of responsible OHV management and how these principles will be preserved once the project is completed. Please consider Evaluation to be a critical consideration within each of the listed criterion. Address the questions listed under each of the four criteria that directly apply to your grant application.

**1) Need for and Benefit of the Project (25 points)**

Describe the objectives of your project and how it will benefit, and protect riding opportunities while protecting resources in the project area.

- What specifically will the project accomplish?
- How will the project protect or improve riding opportunities?
- Will it provide essential maintenance to keep OHV riding opportunities available? Please describe maintenance history for this specific area?
- Describe how this project that will foster and promote a satisfactory and challenging riding opportunity for OHV enthusiasts?
- Why is this project a priority at this time?
- Provide an estimate of how many and what types of OHV enthusiasts will benefit from the project?
- Describe how this project will provide long term value and sustainability?

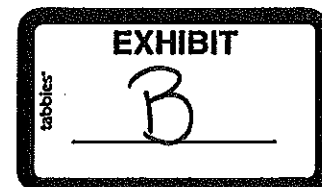
**2) Partnerships, Support and Leverage (25 points)**

Provide evidence of support for this project from trail users, agencies, local governments, community groups, or individuals and attach letters or petitions to your application packet. Applicants need to demonstrate that the project has a broad spectrum of support. Letters from the following entities are encouraged: relevant political subdivisions with jurisdiction over the project area, conservation organizations, user groups who frequent the area, and community organizations. The program places a higher value on the quality of supporting correspondence submitted rather than the quantity of support letters received.

- Describe all agencies, groups, clubs or organizations who are partners on the project. Will the project utilize volunteers or youth group services?
- Are you aware of any controversy this proposed project has caused, if at all, in the local community?

Create a narrative that includes the amounts and sources of funds, in-kind services, materials, and any other items that will be used as leverage/ match in your project:

- Donations, contributions, materials and other ways that this project will be leveraged
- Describe the types of funds that will be contributed to the project.
- Itemize any funds received from other grants or sources.
- Provide your total project cost, including the total amount of all grant funds, use of volunteers, donations, and any additional contributions mentioned in your narrative.



## **OHV Grant Scoring Criteria**

### **State Parks Recommendation for Board Action – July 16<sup>th</sup>, 2010**

#### **(3) Resource Protection, Enhancement and Restoration relative to eligible OHV grant activities. (25 points)**

Describe the principal objectives that will be accomplished by this project (e.g., new trail construction, trail relocation, trail maintenance, restoration/rehabilitation or any other grant eligible activity). Include as many components as are applicable. Show how the project aids in the protection or improvement of the environment by addressing existing problems, and avoiding or minimizing impacts through the implementation of the project.

- In the case of new trail construction, provide documentation that shows all required environmental reviews are completed or indicate the current status of that work.
- Will this project promote the protection, clean up, rehabilitation or avoidance of sensitive environmental resources such as wildlife habitat or wetlands in the project area? If so, explain how.
- Will the project include re-vegetation of eroded areas or trails that will promote the long-term protection of sensitive or critical resources? If so, explain how.
- Will the project construct or improve drainage structures to prevent erosion or repair damage from excessive runoff, or harden and/or bridge stream crossings and wet areas?
- Describe any indirect benefits this project proposal will have on critical resources in the project area.

#### **(4) Travel Management Plan Implementation, Education and Enforcement (25 points)**

Active and effective OHV management is based upon the implementation of travel management plans, broad public awareness, compliance, enforcement and provide adequate recreation opportunities. Describe how the project will promote active OHV management and improve OHV use for the benefit of public land visitors. To receive a full score of 25 points for this category the project must incorporate at least one of the following components.

##### **Travel Management**

- Will this project employ one or more travel management measures such as educational tools, signage, control structures, methods to reduce conflicts among user groups, visitor contacts and/or increased compliance efforts to improve adherence to OHV regulations and designations? If so, explain those measures.
- Include information as to how the project will enhance and promote multiple-use trails.
- Will the project assist in monitoring or closing or rehabilitating off-trail, non-system OHV routes in compliance with TMPs or MVUMs or address damaged or closed routes pursuant to an MVUM? (e.g., repair, or the placement or replacement of signage, fencing, and trail barriers or reseeding, resurfacing, decommissioning, or recountouring trails, etc.). If so, explain how.
- Describe how this project is consistent with the long term plans of the land management agency with jurisdiction over the project area?

##### **Enforcement and Compliance Activities:**

- How will the project improve compliance of OHV regulations and route designations?
- Will the project utilize law enforcement or compliance measures to increase compliance with state OHV laws, designated routes and OHV registration requirements for both resident and non-resident OHV recreationists?

## **OHV Grant Scoring Criteria**

### **State Parks Recommendation for Board Action – July 16<sup>th</sup>, 2010**

- How will project assess, document and report the results of compliance and law enforcement efforts? \*
- Include an estimate of the time and/or financial resources that will be devoted specifically to visitor contacts, compliance and law enforcement under this proposal.

#### **Education**

- Describe the educational components of the project and how this will specifically benefit OHV riders, as well as other area visitors and residents. Note, the most effective educational efforts are those targeted to “on the ground” user education in the field encouraging responsible use through educational materials such as signs, brochures, maps, kiosks, and field contacts.
- Explain how this project will encourage responsible OHV use through education.
- Does this project use or provide educational tools such as maps, signs, brochures, kiosks, or patrols to educate riders? If so, explain.

For all grant requests submitted, please provide a budget breakdown or an estimate as to how your project budget is allocated to the categories of activities listed below:

- *field presence (e.g., patrols, safety checks and monitoring, law enforcement, visitor information and education contacts);*
- *travel management (e.g., signage and sign installation, maps and mapping, MVUMs, inventorying routes, route decommissioning and closures, closure of non-system routes, rehabilitation, planning, engineering, and monitoring);*
- *program maintenance (e.g., installation and maintenance of erosion controls, water bars and culverts, trail clearing and brushing, trail hardening and trail tread repairs, bridge construction and repairs, trailhead improvements and maintenance); and*
- *miscellaneous (e.g., equipment maintenance and repair, personnel training, certification in the use of specialized equipment, program coordination)*