

UPDATE ON COLORADO ACCESS LAWSUITS

There have been some developments in the Forest Service travel management suits winding their way through the U.S. District of Colorado and the Colorado State Parks Lawsuit.

Pike /San Isabel

The first suit was filed on January 31, 2011 by anti-access plaintiffs including The Wilderness Society, Quiet Use Coalition, Wildlands CPR, Center for Native Ecosystems and Great Old Broads for Wilderness regarding the Pike and San Isabel Forests. COHVCO and TPA intervened with the Forest Service to defend this lawsuit which could impact every MVUM that has grandfathered existing usages. These defense expenses are being born solely by Colorado OHV advocacy groups. This case seeks to remove any trails that predated NEPA and were grandfathered in the creation of PSI MVUMs. The exact impact of this suit is yet to be clarified but this suit could impact trails such as the Blanca Peak 4wd trail.

The case was before Senior U.S. District Judge John Kane on March 20, 2011 over a dispute about the administrative record. Plaintiffs moved to strike ten (10) documents from the administrative record, contending they were after-the-fact oral recounts from Forest Service personnel. On March 30, 2012 Judge Kane issued an order agreeing with the plaintiffs and striking the documents, but stating that the Forest Service could file a motion before April 13, 2012 to have the materials considered via completion or supplementation of the record. The first brief on the merits of the legal challenges to the Pike and San Isabel travel maps will be due 60 days after the administrative record issues are resolved. So if the Forest Service does not file the motion to add the extra record materials the merits will be briefed starting in June, 2012. If the Forest Service files the motion briefing will likely not occur until this fall.

Rico/West DeLores

While the second suit on the Rico West Dolores Area of the San Juan Forest was filed later it is moving at a much faster pace. This case is being brought by Colorado Backcountry Hunters and Anglers and seeks closure of 14 trails which have long been open to motorized travel in the area known as the Alpine Triangle. COHVCO, The Trails Preservation Alliance, Blue Ribbon Coalition, the San Juan Trail Riders and the Public Access Preservation Association and intervened to defend this matter with the Forest Service. Notwithstanding this long history of motorized usage, the plaintiff has moved for a preliminary injunction closing these trails before June 1, 2012. The Forest Service will respond to the preliminary injunction motion on April 25th and OHV Intervenors COHVCO et al will respond on April 30th. The plaintiffs will get a reply on May 14th and have asked for oral argument on their motion sometime in late May. The motion for preliminary injunction has been assigned to U.S. District Judge Marcia Krieger.

A preliminary injunction is an extraordinary remedy and one which we intend to vigorously oppose. To get an injunction CBHA must not only show that they are likely to succeed on the merits of their claims, but also that irreparable injury is likely in the absence of an injunction, and that the balance of hardships and public interest tip in favor of granting an injunction. It is essential that the OHV and multiple use community provide strong support for the advocacy effort so that we can assist the Forest Service in successfully repelling this anti-access attack.

State Parks Board

COHVCO was forced to sue the Colorado State Parks Board after there were numerous proposals to provide money paid for OHV registrations for grants that were outside the scope of authority of the State OHV statute. The Trails Preservation Alliance has partnered with

COHVCO to split the significant costs of this suit. These illegal uses included funding municipal law enforcement that could be used for a variety of non-motorized activities and maintenance of non-motorized trails. During this process, several violations of Colorado's Open Meetings Law occurred. These violations were admitted by the State. The Judge unfortunately did not grasp details and seemed predisposed to let the agency off the hook

Despite the admission of the Open Meetings Law violations the District Court ruled against COHVCO on all issues. This decision is being appealed and we hope for a better outcome at the appeals court level. The Appeal brief in the appeal is not due till October. The draft appeal documents have been reviewed and submitted to the Court- our outlook is very optimistic for a ruling in our favor on this issue