



## UPDATE OF THE BEAR CREEK LAWSUIT AND **TEMPORARY** CLOSURE

I am writing to address the significant interest regarding recent announcements of a “ban” on motorcycle use of the popular trail along Bear Creek outside Colorado Springs. There is more to the story than was unfortunately reported inaccurately by the Colorado Springs Gazette in its story posted online at 8:54 p.m. on November 21. (see <http://www.gazette.com/articles/ban-147585-group-bear.html>). The Gazette story jumped the gun and misstated some key facts.

First, the story fails to explain the “settlement” is **PROPOSED** and has not been approved by the Court. In fact, by order issued at 9:36 a.m. on Monday, November 26, the Court **DENIED** the settlement as presented.. The reference in the article to the Forest Service having “10 days to ban the vehicles” fails to note that the 10 days runs from Court approval of the settlement. Obviously that has not yet occurred and will not occur until the USFS and Plaintiff Center for Biological Diversity address the Court’s concerns.

Second, the CMTRA, TPA and COHVCO are interveners in this lawsuit. This means several things. We have formal party status in the case, and can provide input to the Court on the settlement. The settlement comes as no surprise and we have been monitoring the negotiations between the USFS and CBD through our counsel, who has decades of experience in dozens of public lands recreation lawsuits and similar situations.

Third, the story conspicuously omits mention of the fact that in the proposed settlement the Forest Service admits none of CBD’s allegations or claims, and agrees only to “temporary closures” of specified trails on Forest Service land near Bear Creek. The settlement refers to completion of a Forest Service “watershed assessment” which was planned before CBD filed its suit and “consultation” with the U.S. Fish and Wildlife Service at the outcome of that assessment. A possible outcome(s) following conclusion of these agency activities may include the resumption of motorcycle use on one or more of the trails mentioned in the settlement.

Fourth, the practical significance of the “ban” cannot be evaluated until the agency assessment is completed. The primary trail of interest, Trail 667, lies deep in a canyon on primarily north-aspect slopes and is effectively closed from at least December through March most years by weather. In other words, no one meaningfully rides 667 during the winter regardless of the settlement. A nonmotorized route, Trail 666, is traveled daily by many users, yet reflects unimproved crossings and sedimentation issues at least as great as those of the motorized route 667 conveniently ignored by CBD. It is at least conceivable that the agency activities required by the settlement might be completed prior to resumption of the 2013 “season” for motorcycle use of Trail 667. We believe the timing and specific language of the settlement agreement reflect awareness of these factors and the relative procedural ease with which the CBD case can be side-stepped by the agencies.

CMTRA, TPA and COHVCO have been participating in a “roundtable” process at Bear Creek alongside many other groups including nonmotorized recreationists, Trout Unlimited, and the City of Colorado Springs. This roundtable predates the CBD suit and has resulted in numerous improvements to the motorized and nonmotorized trails along Bear Creek and will continue to seek long-term management solutions. We appreciate your awareness of the complete story in forming an opinion about the Bear Creek trails and any support you can provide for the ongoing efforts of the CMTRA, TPA and COHVCO.