

ROCC Business Meeting March 17, 2022

County Road 5 Litigation Report

Our Amicus Brief. As reported in January, our Friend of the Court (“Amicus”) Brief in the pending appeal was accepted by the Court of Appeal. Six other nonprofit organizations joined ROCC in support of protecting public access to public lands: Colorado Mountain Club, Ouray Backcountry Alliance, Western Colorado Alliance for Community Action, San Juan Citizens Alliance, Winter Wildlands Alliance, and Sheep Mountain Alliance.

Background. The litigation concerns whether Ouray County can legally exclude members of the public from vehicular access on a public road while allowing access to private property owners and, if so, under what circumstances. This is particularly important in the case of County Road 5 because it is the sole public access to a large area of National Forest.

Appeal Status. The appeal case will take some time to make its way through the court. San Juan Huts, the appellant, filed its opening brief in early January making a strong case that the County has no legal authority to close the road to the public while allowing private owners access. Ouray County filed its responding brief on March 9th contending that it has wide discretion to do so and that the case should be dismissed. Our joint Amicus brief encourages the court to set a very high bar if it decides that the County has any legal authority to close the road to the public. Colorado Counties, Inc. also filed a short Amicus brief in support of Ouray County. (The Court of Appeal will likely accept their brief since its membership includes 62 Colorado counties.) Also, the CR 5 private property owners were added as parties to the appeal, and they too filed a brief and a request for Oral Argument. There is no set timetable for when the case will ultimately be decided.

Important Pending Legislation. In the meantime, legislation has been introduced in the Colorado Legislature by Representatives McLachlan and Catlin to address one of the main issues raised in the lawsuit – whether skiing and similar recreational activities are legally permissible on roads that are not maintained in the winter. The bill would allow designation of a road as “over-snow” access only, which would ordinarily include skiing as well as snowmobiling. (Use may be limited to human-powered only, however, in the County’s discretion). The prospects for passage are excellent – the bill has received nearly unanimous bipartisan support in both houses of the Legislature. The bill would **not**, however, allow the County to designate CR 5 for “over-snow” access – the owners received a vested right to plow under the agreement with the County. But, recreational use of other unplowed County roads, such as CR 7 and 9, and the Ironton area roads, could be protected under the bill. Stay tuned – the new law would go into effect right away, and ROCC should be prepared to make specific recommendations to the BOCC for designation of unplowed roads for “over-snow” access only.

ROCC County Road 5 Litigation Committee,

Scott Williams, Al Lowande, Diane Thompson, and Kate Kellogg