



Thursday, May 27, 2010

Charlie Richmond
Supervisor, GMUG National Forest

Hand-delivered

Hello Charlie,

Regarding the issues in Bear Creek, I think it is fair to say that many if not most of these issues were in place before my arrival, although I recognize my appearance complicates matters. If that brings additional headache to the Forest Service, I extend my apologies.

In the last few weeks, through an ongoing conversation with the West family, owners of the Nellie, Laura, and Mormon Girl parcels, a number of things have come to light. I have asked for and have received permission from the West family to show you some of this e-mail conversation (see attached printed emails). I should also mention that I do not represent the West family. They are ably represented by their son Steve in Australia. My discussion with them is on a neighbor-to-neighbor basis where the neighbors have similar concerns about trespass liability.

It is my understanding that:

- TSG wishes to purchase the West family claims, but the family doesn't want to sell them at this time
- The Town of Telluride put a counter on Bear Creek traffic in February of 2009 showing over 200 skiers a day going through, or 1400 per week, or 5,600 per month
- TSG has some kind of contract with San Miguel County in which the TSG assists in search and rescue in Bear Creek
- TSG intimates that they therefore have a "right" to perform continued avalanche study, as well as search and rescue work, on and over private lands in Bear Creek, in the name of "public safety"
- TSG in as much admits their new guided ski permit is dependent on the West family allowing them through the Nellie claim
- TSG offers to mitigate West family accidental death and injury liability by including them within their insurance policy
- TSG believes the skiers are going to go through their property anyway, and at least those under their guided permits would be provide the family with some relief
- And then there is the matter of a certain case in Silverton, in which a judge ruled that Brill's Silverton Ski Area has the right to travel across certain private lands within the ski permit boundary to mitigate snow avalanche conditions on a public road in the valley - - the intimation being that if the West family doesn't "cooperate" then the result might be similar to the Silverton case

There is a possibility that the West family may have been the recipient of a thinly veiled threat with this kind of communication. Bear Creek has no similarity to the Silverton case, in which legislative authority was granted wide discretion by a judge for purposes of public safety regarding an open public county road in the valley bottom. The judge did not grant the ski area

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the right to trespass for purposes of ski area benefit. In fact, the judge ruled that in the years 2001 to 2004 that Brill's ski company in fact trespassed for ski company gain.

If TSG wishes to employ barely veiled threats to a longstanding landowner, or perhaps to GHDC, they are proceeding on a wrong path. San Miguel County and the San Miguel Sheriff's Office will be asked to show the "contract" they have with TSG, and whether or not legislative authority has given them permission to trespass over private lands. If so, the County will be asked under what authority they are acting, and what "public benefit" they believe they are protecting. There is no vehicular road in upper Bear Creek. The vast majority of people who ski through Bear Creek do so after riding a TSG chair lift, at \$92.00 per day. In this case "public benefit" equals "TSG benefit". Furthermore, there would be no need for search and rescue in Bear Creek -- if it were closed to winter skiing and the Telluride public honored laws and regulations.

The problem in Telluride is that a certain element will not abide by laws and regulation when it comes to their sacred back country skiing. What you are witnessing in Bear Creek is massive appropriation of private property without compensation, with over 5,000 skiers a month passing through private lands, thumbing their nose at the landowners and the County Sheriff as they do so. This may be par for the course in Telluride, but it does not make it lawful or right.

I for one have no problem with TSG's efforts to expand skiing into Bear Creek if the Forest Service believes it to be in the public interest and provided TSG deals with the landowner issues in an up-front and honest way. That would be all landowners in Bear Creek, including the West family, the Alexander family and GHDC.

A very good case can be made that because of the extraordinary liability issues related to winter skiing in Bear Creek, that TSG should own every acre of private land above the Nellie Mine before making an application for a boundary expansion or guided skiing permit. That way, they can absorb 100% of the liability.

When TSG tells the West family that there are only two options -- one, sell to TSG because skiers will go through regardless -- or two, TSG offers insurance inclusion for an access easement -- they are being disingenuous for not including another alternative they don't want to discuss.

And that is TSG lives with the ski area permit they have, the trespass gates come down, Gold Hill Ridge is roped off as it was ten years ago, and Sheriff Masters deals with the trespassers through Bear Creek as he sees fit. The Mueller's are being asked to live with what they have. TSG and Horning could do the same. It's hard to figure how TSG has good standing to come before the Forest Service for an expansion plan and a guided skiing permit under these circumstances.

Aaron Clay has asked me to join him in a meeting at Judy's office in Norwood at 10:00 A.M. on June 2nd. I will be there. I will ask Judy to post the trailheads accordingly. I will ask her to explain how the skiing public, and the recently permitted ski guide permittees, would ski into and out of upper Bear Creek Basin without traveling through GHDC private lands or the West family lands. If she can't explain how that could be realistically accomplished, then I will ask her to withdraw the guided skiing permits, close the Gold Hill backcountry release gates, rope off the ski area boundary on Gold Hill, and close the entire Bear Creek drainage to skiing for safety

reasons. GHDC will not approve the continuance of the avalanche study on GHDC lands and will not approve avalanche control on GHDC lands. GHDC will not consider a temporary access easement to TSG for this upcoming ski season.

Charlie, I know that sounds harsh. But think about it. The "give us access and we'll insure you proposal" leaves begging the question of the other 50% (probably 90%) of non-guided skiers, one of whom is going to be killed sooner than later. The landowner is still potentially liable - - especially so if the landowner doesn't vociferously object. GHDC objects and I believe the West family also objects.

With that many skiers, somebody is going to die, and shortly. This is a terribly dangerous place to ski without avalanche control. Bear Creek landowners have potential liability if the death happens on their lands. GHDC has two of the most dangerous runs in the basin, "The Graveyard" and "Deep & Dangerous". The West Family has an equally wicked and dangerous run call "e-ticket" which comes directly off of the release gate and straight down over and across their Nellie parcel. TSG will fall back on their mega-insurance policy and yes they will be sued even if they weren't the guide, because they sold the lift ticket that brought the dead skier to the release gate.

The only person that gets out of this is the Forest Service, but not really so. Although the Forest Service cannot be sued, it would be patently unfair for a supervisor to be left with the thought of a dead young skier who simply didn't understand the risk. This issue is not of your making. The aggressive nature of TSG and a permissive, look-the-other-way, private-property-be-damned attitude over there in Telluride is causing it to go this way. I for the life of me can't figure out how the GMUG has been dragged into a situation that should have been reconciled between the landowners and TSG long ago, long before guided ski permits were issued in this basin.

In closing, we would offer to trade you easements. That would be a non-exclusive easement on the Gold Hill Road (sans the private lands crossing issues) from the Town of Telluride to the Modena parcel, and in return we grant you access easements for the East Fork of Bear Creek Trail and the Wasatch Trail in West Bear Creek for summer use.

We do feel it necessary to perfect our right of vehicular access to the private lands. I would rather trade you easements than include the Forest Service in our quiet title suit against Telluride Ski & Golf.

I know there are some who hold the view that GHDC's position in this matter is purely profit driven. Be that as it may. The profit motive is not denied, but to purely frame the issue in that context is to purposely look the other way at the central issue, that being the unlawful appropriation of private lands including the questionable issuance of ski-guide permits that require trespass.

The present or future value of the private lands in this basin should be irrelevant. The landowners are not asking for federal land exchange. Appropriation of private land is the issue. Liability is the issue. Fairness is the issue. And this issue remains the same if my name is deleted and George Greenberg or John Brown is inserted.

Although I can't speak for the West family, GHDC intends to look for all sources of value, including mining. The value of the private lands cannot be determined without lawfully allowed

vehicular road access. It cannot be determined with discriminatory zoning application. In the end, value is determined by a purchaser and a seller in a private market on a level playing field. Some day those values will be found in Bear Creek.

This letter has been reviewed and concurred with by the West family.

Sincerely,



P.S. Aaron tells me this morning that Ranger Judy Schutzka has called off the June 2nd meeting at her office.