



“Voice of the Western Slope since 1953”

A coalition of counties, communities, businesses & individuals

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04-9 NR 3

Floating Access Across Private Property

WHEREAS Colorado’s river floating community contributes over \$100 million annually to Colorado’s economy, primarily in rural areas, and demand for access to Colorado’s floatable streams continues to grow at an annual rate of over 9%, and

WHEREAS the right to uninterrupted privacy and the right to exclude public access are fundamental tenets of private property, and

WHEREAS landowners who invest in the improvement of the aquatic habitat in streams flowing through their property for the purpose of enhancing recreational fishing opportunities may see that value eroded by uninvited floating craft on that stream, and

WHEREAS any governmental action opening private property to public use constitutes a taking which requires just compensation, and

WHEREAS, in 1977, the Colorado General Assembly, by enacting C.R.S. § 18-4-504.5 which defined “premises” for purposes of the criminal trespass statute, effectively made it not a crime to float through private property provided the floater does not touch the bed or banks, and

WHEREAS, in 1979, in the case of *People v. Emmert*, the Colorado Supreme Court held that Article XVI § 5 of the Colorado Constitution does not give the public the right to use streams flowing through private land without the consent of the owner, and

WHEREAS, in 1982, Attorney General Duane Woodard issued an opinion on C.R.S. § 18-4-504.5 which concluded that it is not a crime to float through private property provided the floater does not touch the bed or banks, and also noted that the statute “*speaks only to criminal trespass (and) does not address the question of civil remedies and therefore cannot be viewed as providing authority for private owners of stream banks and beds to prevent such use of the water*” (This statement is misleading in that the legislature does not have to authorize property owners to exclude others; this is already a fundamental aspect of property rights.), and

WHEREAS, in 2001, the Gunnison County District Court (Judge Patrick) ruled that C.R.S. § 18-4-504.5 is not a defense to civil trespass, and

WHEREAS the law in Colorado is that floating through private property without permission and without touching the bed or banks is not a criminal trespass but it may be a civil trespass, and

WHEREAS notwithstanding the foregoing, the public (including both landowners and floating enthusiasts) remains confused about the status of the law regarding floating across private lands, and this confusion is creating increasing potential for conflict on Colorado’s waterways;

THEREFORE BE IT RESOLVED that

- CLUB 20 recognizes the importance of maintaining a viable floating community in Colorado.
- CLUB 20 equally recognizes the right of private landowners to exclude public access to streams flowing through their property.
- CLUB 20 recognizes the importance of, and broad common interest in, preserving the quality of the rafting experience and the health of the resource, and the corresponding need to ultimately regulate all those users who float on streams.
- CLUB 20 recognizes that the most sustainable solutions which benefit the most people will come about through efforts to build consensus around common objectives, and therefore CLUB 20 encourages the use of river management plans developed through a collaborative process by locally affected interests; these management plans should emphasize the use of incentives over regulations.

AND BE IT DIRECTED that CLUB 20 should offer its continued assistance to serve as an informal forum for constructive dialogue between landowners, the floating industry, and individual floating enthusiasts in an effort to allow floating across private property (through the use of floating access agreements) in such a way that all affected parties benefit, and

BE IT FURTHER DIRECTED that CLUB 20 should continue to play a role in educating the public about Colorado's current river access law, private property rights, and the opportunities available to secure floating access across private property.

Adopted September 10, 2004