

## Memorandum

**To:** Mayor and Council  
**From:** Tom Baker, Town Administrator  
**Date:** December 15, 2015  
**Re:** Recreation Easements on Private Lands Roaring Fork Mountain Bike Association (RFMBA) – New Castle Trails (NCT)

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**Purpose:** The purpose of this item is to have an informal discussion with RFMBA/NCT regarding recreational easements through private lands – Lakota and CVR.

**Background and Discussion:** On Wednesday December 2<sup>nd</sup>, the New Castle POSTR Committee met with RFMBA and NCT to discuss the issue of recreational easements through private lands. NCT members spoke of the social trails that existed above the golf course on the north end of town and how those trails offered easier access to BLM land than the more difficult Colorow Trail, which was steep and exposed in sections. The group also identified the Cemetery Road and its logical extension to BLM land as an excellent access to public lands. Town Attorney, David McConaughy talked about the Cemetery Road and its history, as well as the five foot buffer that Ms. Foss created on the north edge of Lakota, we assume, to prevent direct access to public lands. David McConaughy also spoke of CRS 33-41-101, which grants significant liability protections to a private landowner who makes his property available for a recreational purpose through easement, lease, or other similar arrangement with the town.

The discussion at the POSTR meeting was stimulating and provided all with an idea of future partnerships between land owners, community members and the town for the benefit of all parties. Several people pointed out the obvious recreational benefits and benefits to the economy and to the property owner by exposing non-residents to the quality of life opportunities of living in New Castle.

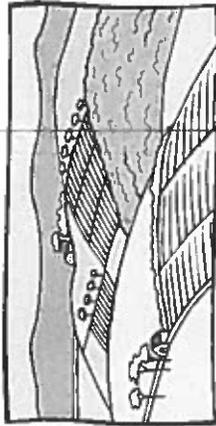
POSTR is supportive of this idea and it was determined that the best way to approach the land owners is through the NCT. It was thought that once discussions began between NCT and the land owners then either party could invite the town to participate and offer assistance for liability protection, or other considerations to find mutually beneficial solutions to problems.

**Request:** Engage NCT in this discussion.

Attached is a copy of CRS 33-41-101 and some research that David did on a court case that may have bearing on the use of Cemetery Road.

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It has become more common for trail groups to request access to privately held lands for trail use. Most landowners of private and public lands want to grant permission, but they can have questions concerning their risks, liability, and responsibility. State statutes assure landowners protection for allowing access, creating new opportunities for recreation.



Developed with assistance from  
Rivers, Trails and Conservation Assistance  
National Park Service  
<http://www.nps.gov/rtca>  
505-988-6091



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### For more information:

Colorado Recreational Use Statute  
TITLE 33. WILDLIFE AND PARKS AND  
OUTDOOR RECREATION  
RECREATIONAL AREAS AND SKI SAFETY  
ARTICLE 41. OWNERS OF RECREATIONAL  
AREAS - LIABILITY  
<http://www.law.utexas.edu/dawson/rectea>  
[te/co\\_rec.htm](http://www.law.utexas.edu/dawson/rectea/co_rec.htm)

American Association for Horsemanship  
Safety

<http://www.law.utexas.edu/dawson/recreate/rectangle.htm> or 1-512-488-2220



Equestrian Land Conservation Resource  
<http://www.elcr.org> or 1-815-776-0150



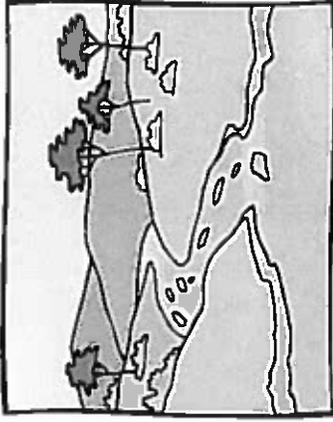
International Mountain Bicycling Association  
<http://www.imba.com> or 1-888-442-4622



American Whitewater  
<http://www.americanwhitewater.org/>  
or 1-866-BOAT4AW



# Colorado Recreational Use Statute And The Private Landowner



## Protecting landowners providing recreational opportunities

Communities and trail groups are working hard to create a system of trails for recreation, health, and commuting.

Issues arise when the optimal or only route for a trail crosses privately owned land.

Trail users are highly appreciative of landowners allowing trail use on their land. They want to work with landowners to assure the best experience for both groups.

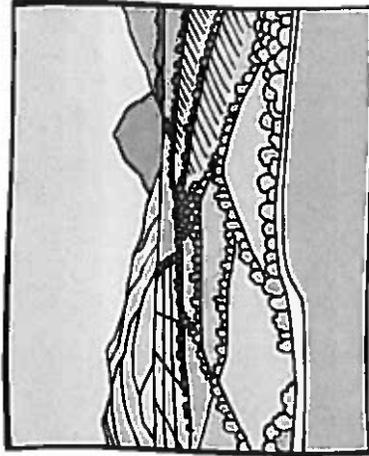
Many landowners are willing to allow people to pass through their property, enjoying the pleasant scenery, but they can have some valid concerns.

The foremost questions the private landowner asks:

"What risks I do I as a landowner face when allowing access through my property?"

"Can I as a landowner be held liable if a person using a trail is injured on my land?"

The Colorado legislature has enacted a "Recreational Use Statute" to encourage owners and managers to allow public access for recreation use on their lands.



Landowners can be any of the following – owner, tenant, lessee, occupant, or person in control of the premises. The Statute defends both private and public land managers.

Land can include physical land, roadways, water, watercourses, structures, buildings, machinery or equipment attached to the land.

Landowners are not required to keep their premises safe or to warn visitors of hazardous conditions, structures, or activities on their property. However, landowners cannot deliberately endanger people who enter for recreational purposes.

People entering and using privately owned lands for recreational purposes are responsible for exercising due care in their use of the land.

This liability protection is not valid if the landowner collects fees or rent for the use of the land. Exceptions can be, but not limited to payment for land leased to a government agency that then manages the property or nominal gifts to the landowner.

If you as a landowner allow a trail to cross your property, let the trail organization know that you want to be contacted immediately to address concerns before they have a chance to develop into problems. Addressing it promptly will make a better situation for all.



## Colorado Recreational Use Statute

### TITLE 33. WILDLIFE AND PARKS AND OUTDOOR RECREATION RECREATIONAL AREAS AND SKI SAFETY ARTICLE 41. OWNERS OF RECREATIONAL AREAS - LIABILITY

#### 33-41-101. Legislative declaration

The purpose of this article is to encourage owners of land to make land and water areas available for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

#### 33-41-102. Definitions

As used in this article, unless the context otherwise requires:

- (1) "Charge" means a consideration paid for entry upon or use of the land or any facilities thereon or adjacent thereto; except that, in a case of land leased to a public entity or in which a public entity has been granted an easement or other rights to use land for recreational purposes, any consideration received by the owner for such lease, easement, or other right shall not be deemed a charge within the meaning of this article nor shall any consideration received by an owner from any federal governmental agency for the purposes of admitting any person constitute such a charge.
- (2) "Land" also means roads, water, watercourses, private ways, and buildings, structures, and machinery or equipment thereon, when attached to real property.
- (3) "Owner" includes, but is not limited to, the possessor of a fee interest, a tenant, lessee, occupant, the possessor of any other interest in land, or any person having a right to grant permission to use the land, or any public entity as defined in the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., which has an interest in land.
- (4) "Person" includes any individual, regardless of age, maturity, or experience, or any corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or any other legal entity.
- (4.5) "Public entity" means the same as defined in section 24-10-103(5), C.R.S.
- (5) "Recreational purpose" includes, but is not limited to, any sports or other recreational activity of

whatever nature undertaken by a person while using the land, including ponds, lakes, reservoirs, streams, paths, and trails appurtenant thereto, of another and includes, but is not limited to, any hobby, diversion, or other sports or other recreational activity such as: Hunting, fishing, camping, picnicking, hiking, horseback riding, snowshoeing, cross country skiing, bicycling, riding or driving motorized recreational vehicles, swimming, tubing, diving, spelunking, sight-seeing, exploring, hang gliding, rock climbing, kite flying, roller skating, bird watching, gold panning, target shooting, ice skating, ice fishing, photography, or engaging in any other form of sports or other recreational activity.

### **33-41-103. Limitation on landowner's liability**

(1) Subject to the provision of section 33-41-105, an owner of land who either directly or indirectly invites or permits, without charge, any person to use such property for recreational purposes does not thereby:

(a) Extend any assurance that the premises are safe for any purpose;

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed;

(c) Assume responsibility or incur liability for any injury to person or property or for the death of any person caused by an act or omission of such person.

(2) (a) To the extent liability is found, notwithstanding subsection (1) of this section, the total amount of damages that may be recovered from a private landowner who leases land or a portion thereof to a public entity for recreational purposes or who grants an easement or other rights to use land or a portion thereof to a public entity for recreational purposes for injuries resulting from the use of the land by invited guests for recreational purposes shall be:

(I) For any injury to one person in any single occurrence, the amount specified in section 24-10-114 (1) (a), C.R.S.;

(II) For an injury to two or more persons in any single occurrence, the amount specified in section 24-10-114 (1) (b), C.R.S.

(b) The limitations in this subsection (2) shall apply only when access to the property is limited, to the extent practicable, to invited guests, when the person injured is an invited guest of the public entity, when such use of the land by the injured person is for recreational purposes, and only during the term of such lease, easement, or other grant.

(c) Nothing in this subsection (2) shall limit, enlarge, or otherwise affect the liability of a public entity.

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(d) In order to ensure the independence of public entities in the management of their recreational programs and to protect private landowners of land used for public recreational purposes from liability therefor, except as otherwise agreed by the public entity and a private landowner, a private landowner shall not be liable for a public entity's management of the land or portion thereof which is used for recreational purposes.

(e) For purposes of this subsection (2) only, unless the context otherwise requires:

(I) "Invited guests" means all persons or guests of persons present on the land for recreational purposes, at the invitation or consent of the public entity, and with or without permit or license to enter the land, and all persons present on the land at the invitation or consent of the public entity or the landowner for business or other purposes relating to or arising from the use of the land for recreational purposes if the public entity receives all of the revenues, if any, which are collected for entry onto the land. "Invited guests" does not include any such persons or guests of any person present on the land for recreational purposes at the invitation or consent of the public entity or the landowner if the landowner retains all or a portion of the revenue collected for entry onto the land or if the landowner shares the revenue collected for entry onto the land with the public entity. For the purposes of this subparagraph (I), "revenue collected for entry" does not include lease payments, lease-purchase payments, or rental payments.

(II) "Land" means real property, or a body of water and the real property appurtenant thereto, which is leased to a public entity or for which an easement or other right is granted to a public entity for recreational purposes. "Land", as used in this subsection (2), does not include real property, buildings, or portions thereof which are not the subject of a lease, easement, or other right of use granted to a public entity.

(II.5) "Lease" or "leased" includes a lease-purchase agreement containing an option to purchase the property. Any lease in which a private landowner leases land or a portion thereof to a public entity for recreational purposes shall contain a disclosure advising the private landowner of the right to bargain for indemnification from liability for injury resulting from use of the land by invited guests for recreational purposes.

(II.7) "Management" means the entire range of activities, whether undertaken or not by the public entity, associated with controlling, directing, allowing, and administering the use, operation, protection, development, repair, and maintenance of private land for public recreational purposes.

(III) "Recreational purposes" includes, but is not limited to, any sports or other recreational activity of whatever nature undertaken by an invited guest while using the land, including ponds, lakes, reservoirs, streams, paths, and trails appurtenant to, of another and includes, but is not limited to, any hobby, diversion, or other sports or other recreational activity such as: Fishing, picnicking, hiking, horseback riding, snowshoeing, cross country skiing, bicycling, swimming, tubing, diving, sight-seeing, exploring, kite flying, bird watching, gold panning, ice skating, ice fishing, photography, or engaging in any other form of sports or other recreational activity, as well as any activities related to such sports or recreational activities, and any activities directly or indirectly resulting from such sports or recreational activity.

(f) Nothing in this subsection (2) shall limit the protections provided, as applicable, to a landowner under section 13-21-115, C.R.S.

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### **33-41-104. When liability is not limited**

(1) Nothing in this article limits in any way any liability which would otherwise exist:

(a) For willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm;

(b) For injury suffered by any person in any case where the owner of land charges the person who enters or goes on the land for the recreational use thereof; except that, in case of land leased to a public entity or in which a public entity has been granted an easement or other rights to use land for recreational purposes any consideration received by the owner for such lease, easement, or other right shall not be deemed a charge within the meaning of this article nor shall any consideration received by an owner from any federal governmental agency for the purpose of admitting any person constitute such a charge;

(c) For maintaining an attractive nuisance; ; except that, if the property used for public recreational purposes was constructed or is used for or in connection with the diversion, storage, conveyance, or use of water, the property and the water within such property shall not constitute an attractive nuisance;

(d) For injury received on land incidental to the use of land on which a commercial or business enterprise of any description is being carried on; except that in the case of land leased to a public entity for recreational purposes or in which a public entity has been granted an easement or other rights to use land for recreational purposes, such land shall not be considered to be land upon which a business or commercial enterprise is being carried on.

### **33-41-105. Article not to create liability or relieve obligation**

(1) Nothing in this article shall be construed to:

(a) Create, enlarge, or affect in any manner any liability for willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm, or for injury suffered by any person in any case where the owner of land charges for that person to enter or go on the land for the recreational use thereof;

(b) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this article to exercise care in his use of such land and in his activities thereon or from the legal consequences of failure to employ such care;

(c) Limit any liability of any owner to any person for damages resulting from any occurrence which took place prior to January 1, 1970.

### **33-41-105.5. Prevailing party--attorney fees and costs**

The prevailing party in any civil action by a recreational user for damages against a landowner who allows the use of the landowner's property for public recreational purposes shall recover the costs of the action together with reasonable attorney fees as determined by the court.

**Amended in 1997.**

**Reviewed by AAHS in July 2001.**

 [West Reporter Image \(PDF\)](#)

992 F.2d 1061

Judges and Attorneys

United States Court of Appeals,  
Tenth Circuit.

BOARD OF COUNTY COMMISSIONERS FOR GARFIELD COUNTY, COLORADO; United States of  
America, Plaintiffs-Appellants,  
v.  
W.H.I., INC., a Georgia Corporation; Verne E. Soucie, Sheriff of Garfield County, Colorado; Brown  
Land & Cattle Company, Inc.; Stewart Title Guaranty Company, Defendants-Appellees,  
and  
Brown Land & Cattle Company, Inc.; Double Eagle Land & Cattle Company, Inc.; Charles R.  
Rittenberry, Third-Party-Defendants-Appellees,  
Monroe Investment Company, Appellee.  
BOARD OF COUNTY COMMISSIONERS FOR GARFIELD COUNTY, COLORADO, Plaintiff-Appellee,  
and  
United States of America, Plaintiff,  
Monroe Investment Company, Third-Party-Plaintiff-Appellant,  
v.  
W.H.I., INC.; Verne E. Soucie, Sheriff of Garfield County, Colorado, Defendants-Appellees,  
and  
Double Eagle Land & Cattle Company, Inc.; Charles R. Rittenberry; Brown Land & Cattle Company,  
Inc., Third-Party-Defendants-Appellees,  
and  
Stewart Title Guaranty Company, Third-Party-Defendant.

Nos. 92-1070, 92-1082.

April 28, 1993.

Rehearing Denied July 6, 1993.

County commissioners brought state-court action against landowners, including United States, for declaratory judgment that public held right-of-way by adverse possession. The United States removed case to federal court and was realigned as plaintiff. The United States District Court for the District of Colorado, John L. Kane, Jr., J., determined that public use of road was permissive, rather than adverse. United States appealed. The Court of Appeals, Barrett, Senior Circuit Judge, held that: (1) United States had standing to appeal, and (2) 20-year period for establishing adverse possession began to run no later than date of county resolutions declaring road as public highway.

Reversed and remanded.

## West Headnotes

[1]  [KeyCite Citing References for this Headnote](#)

↪ [170B Federal Courts](#)

↪ [170BVIII Courts of Appeals](#)

↪ [170BVIII\(B\) Appellate Jurisdiction and Procedure in General](#)

↪ [170Bk543 Right of Review](#)

↪ [170Bk544 k. Particular Persons. Most Cited Cases](#)

United States had standing to appeal ruling that road over federal and private land for access to National Forest was not public; United States suffered injury traceable to obstruction, and that injury

could be addressed by decision declaring road to be public highway. U.S.C.A. Const. Art. 3, § 1 et seq.

[2]  KeyCite Citing References for this Headnote

- ↳ 170A Federal Civil Procedure
  - ↳ 170AII Parties
    - ↳ 170AII(A) In General
      - ↳ 170Ak103.1 Standing
        - ↳ 170Ak103.2 k. In General; Injury or Interest. Most Cited Cases

Standing may be raised at any time in judicial process.

[3]  KeyCite Citing References for this Headnote

- ↳ 170B Federal Courts
  - ↳ 170BI Jurisdiction and Powers in General
    - ↳ 170BI(A) In General
      - ↳ 170Bk29 Objections to Jurisdiction, Determination and Waiver
        - ↳ 170Bk29.1 k. In General. Most Cited Cases  
(Formerly 170Bk29)

- ↳ 170B Federal Courts  KeyCite Citing References for this Headnote
  - ↳ 170BI Jurisdiction and Powers in General
    - ↳ 170BI(A) In General
      - ↳ 170Bk29 Objections to Jurisdiction, Determination and Waiver
        - ↳ 170Bk30 k. Power and Duty of Court. Most Cited Cases

Jurisdictional questions are primary concern and can be raised at any time by courts on their own motion.

[4]  KeyCite Citing References for this Headnote

- ↳ 170A Federal Civil Procedure
  - ↳ 170AII Parties
    - ↳ 170AII(A) In General
      - ↳ 170Ak103.1 Standing
        - ↳ 170Ak103.2 k. In General; Injury or Interest. Most Cited Cases

Whether plaintiff has standing to bring cause of action is question of law.

[5]  KeyCite Citing References for this Headnote

- ↳ 200 Highways
  - ↳ 200I In General; Establishment
    - ↳ 200I(B) Establishment by Prescription, User, or Recognition
      - ↳ 200k6 Duration and Continuity of Use
        - ↳ 200k6(1) k. In General. Most Cited Cases

Colorado's 20-year period for establishing adverse possession of road across private land for access to National Forest began to run no later than date of county resolutions declaring road as public highway in response to landowners' petition. West's C.R.S.A. § 43-2-201(1)(c).

[6]  KeyCite Citing References for this Headnote

↳ 200 Highways

↳ 200I In General; Establishment

↳ 200I(B) Establishment by Prescription, User, or Recognition

↳ 200k8 k. Claim or Color of Right to Use. Most Cited Cases

Allegedly improper recording of county resolutions declaring road to be public highway was inapplicable in determining county's adverse possession under Colorado law. West's C.R.S.A. § 43-2-201(1)(c).

[7]  KeyCite Citing References for this Headnote

↳ 200 Highways

↳ 200I In General; Establishment

↳ 200I(B) Establishment by Prescription, User, or Recognition

↳ 200k11 Operation and Effect

↳ 200k12 k. In General. Most Cited Cases

Road as to which county was claiming adverse possession was confined to reasonably definite and certain line under Colorado law; aware of public use of road during 20-year period, landowners acquiesced to the use notwithstanding fact that road may have changed course, and long-time resident stated that present location of right-of-way accorded with historic location.

**\*1062** Robert L. Klarquist (Vicki A. O'Meara and Barry M. Hartman, Acting Asst. Attys. Gen., Washington, DC, Michael J. Norton, U.S. Atty., Paula M. Ray, Asst. U.S. Atty., Denver, CO, Jacques B. Gelin, Dept. of Justice, Washington, DC, with him on the briefs), Dept. of Justice, Washington, DC, for federal plaintiffs-appellants.

Geoffrey P. Anderson (Phillip S. Figa of Burns, Figa & Will, P.C., Englewood, CO, and Ronald M. Wilson, Denver, CO, with him on the brief), of Burns, Figa & Will, P.C., Englewood, CO, for defendants-appellees W.H.I., Inc. and Monroe Investment Co.

Before BRORBY, BARRETT and EBEL, Circuit Judges.

BARRETT, Senior Circuit Judge.

The Board of County Commissioners of Garfield County (County) commenced this action in the Garfield County District Court, State of Colorado, seeking declaratory and injunctive relief. At issue is a roadway, which the parties acknowledge is a public road as it reaches from New Castle, Colorado, to Highland Cemetery. The status of this road is contested as it extends from Highland Cemetery northeast to White River National Forest. Over this approximate 5.5 miles, the road segments public lands administered by the Bureau of Land Management (B.L.M.), and also four parcels, privately-owned at the commencement of this action by defendants Leo Payne, Payne Land and Cattle Company, and W.H.I., Inc.

In its Complaint,<sup>FN1</sup> the County asserted that the public holds a right-of-way established by adverse possession under Colorado law. The County contended:

**FN1.** The County named as defendants the United States, Leo Payne, Payne Land and Cattle Company, W.H.I., Inc., and Verne E. Soucie, the Sheriff of Garfield County. Following trial, Monroe Investment Company obtained from Leo Payne parcels of real property crossed by the disputed road. On appeal, W.H.I., Inc. is joined in its brief by Leo Payne, as cross-appellant, and by Monroe Investment Company. Payne Land & Cattle Company withdrew its appearance from and Verne Soucie takes no position in the consolidated appeals.

The road crosses land owned by the Defendants [and] also crosses public lands owned by the United States which are administered by the United States Department of the Interior, Bureau of Land Management....

\* \* \* \* \*

The Defendant, the United States of America owns and controls all property crossed by the road that is the subject of this case ... to the extent that such road does not cross lands owned by the previously enumerated Defendants.

\* \* \* \* \*

As both a property owner, whose land is crossed by the subject road and is [sic] a property owner whose land is accessed by the subject road, the United States of America may claim an interest in the subject matter of this litigation that must be asserted through this case.

\* \* \* \* \*

This road has been used by the property owners, the public and for commercial purposes from its construction up to when it was closed by the Defendant and his predecessors with the knowledge of the landowners.

(R., App. to Brief for the United States, pp. 2-3).

In its Answer, the United States admitted the above-mentioned allegations of the County. It also asserted the following cross-claim against the private landowner defendants:

The Road provides essential, necessary and unique access to land owned by Defendant United States which is managed by \*1063 the United States Department of Agriculture, Forest Service, and by the United States Department of Interior, Bureau of Land Management.

The road provides the citizens of the United States and others with an essential, necessary, and unique access to lands owned by Defendant United States including but not limited to the White River National Forest and other land owned and controlled by Defendant United States.

(R., App. to Brief for the United States, p. 54).

Thereafter, because its ultimate interest paralleled that of the County, the United States removed this case to federal district court where it was realigned as a party-plaintiff.

Defendant Payne Land and Cattle Company denied that the district court had jurisdiction to adjudicate the United States' cross-claim and asserted that the case had been wrongfully removed. As a defense, this defendant alleged that the United States had improperly perfected the existence of and its interest in the subject road. Further, it asserted that "[t]he road is not necessary for access to any land owned by the United States," and, as such, "the United States has no standing to assert its cross-claim in this case." In its pretrial order, the district court acknowledged that the defendants believed the court lacked jurisdiction and wished to preserve the issue for possible appeal. The court, having denied the defendants' motions challenging jurisdiction, ruled that it had jurisdiction over the parties and subject matter in this action.

At trial, the County and the United States (collectively, the governments) sought a declaration that the road is a public highway <sup>FN2</sup> and an order restraining the private landowners from altering, destroying, or further obstructing the road. At the close of the governments' case, the district court granted the landowners' motion for dismissal pursuant to Fed.R.Civ.P. 41(b) on the ground that plaintiffs failed to show a right to relief. Both the County and the United States filed Notices of Appeal. Before briefing, however, the County withdrew its appeal, leaving the United States as the sole appellant.

FN2. Under Colo.Rev.Stat. § 43-2-201(1)(c) (1984), "[a]ll roads over private lands that have been used adversely without interruption or objection on the part of the owners of such lands for twenty consecutive years" are declared to be public highways.

## I.

[1]  We first address whether the United States is properly before this court on appeal. During oral argument, the standing of the United States to proceed with its appeal was raised. The issue concerned which governmental entity would be responsible for enforcing a ruling declaring this a public roadway, particularly when the County, by withdrawing its appeal, had apparently acquiesced in the district court's declaration that this is not a county road.

[2]  [3]  Standing may be raised at any time in the judicial process. Judice v. Vall, 430 U.S. 327, 331, 97 S.Ct. 1211, 1215, 51 L.Ed.2d 376 (1977); Citizens Concerned for Separation of Church and State v. City and County of Denver, 628 F.2d 1289, 1297 (10th Cir.1980), cert. denied, 452 U.S. 963, 101 S.Ct. 3114, 69 L.Ed.2d 975 (1981). "We review de novo issues such as standing that are prerequisites to this court's jurisdiction." Kansas Health Care Ass'n, Inc. v. Kansas Dep't of Social and Rehab. Servs., 958 F.2d 1018, 1021 (10th Cir.1992). Jurisdictional questions are of primary concern and can be raised at any time by courts on their own motion. Citizens, 628 F.2d at 1297. See also McGrath v. Kristensen, 340 U.S. 162, 71 S.Ct. 224, 95 L.Ed. 173 (1950).

[4]  In ANR Pipeline Co. v. Corporation Com'n, 860 F.2d 1571, 1579 (10th Cir.1988), cert. denied, 490 U.S. 1051, 109 S.Ct. 1967, 104 L.Ed.2d 435 (1989), we stated that standing is analyzed with two inquiries: "(a) whether the plaintiff alleges that the challenged action has caused him injury in fact (economic or otherwise), and (b) whether the interest sought to be protected by the plaintiff is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." See also \*1064 Association of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150, 152-53, 90 S.Ct. 827, 829, 25 L.Ed.2d 184 (1970); Citizens, 628 F.2d at 1295. While the term "standing" subsumes a blend of constitutional requirements and prudential considerations, Article III of the United States Constitution requires that a party which invokes the court's authority show that it has personally suffered some actual or threatened injury as a result of putatively illegal conduct of the defendant and that the injury can be fairly traced to the challenged action and is likely to be redressed by a favorable decision. Franchise Tax Bd. v. Alcan Aluminum Ltd., 493 U.S. 331, 110 S.Ct. 661, 107 L.Ed.2d 696 (1990); Whitmore v. Arkansas, 495 U.S. 149, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990); Allen v. Wright, 468 U.S. 737, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984); Ash Creek Mining Co. v. Lujan, 969 F.2d 868 (10th Cir.1992); Riggs v. City of Albuquerque, 916 F.2d 582 (10th Cir.1990), cert. denied, 499 U.S. 976, 111 S.Ct. 1623, 113 L.Ed.2d 720 (1991). Whether a plaintiff has standing to bring a cause of action is a question of law for the court to determine. Motive Parts Warehouse v. Facet Enters., 774 F.2d 380, 389 (10th Cir.1985).

The United States points to Simon v. Pettit, 651 P.2d 418 (Colo.Ct.App.1982), aff'd, 687 P.2d 1299 (Colo.1984), in support of its contention that it has standing to appeal. In Simon, the plaintiffs-appellants sought a declaration that two footpaths used by them, each 18 inches wide with definite and specific lines, which crossed over the defendants'-appellees' lands, were public highways by virtue of adverse possession under § 43-2-201(1)(c), supra note 2. The jury found that the footpaths had been used by the public for twenty consecutive years and that the use was actual, visual, hostile, and with the implied permission of the owners as evidenced by their silent acquiescence. The Colorado Court of Appeals reversed the district court's judgment which declared the footpaths public highways, ruling that inasmuch as the land involved was vacant, unenclosed, and unoccupied, the presumption that the use was adverse did not apply. While the court did agree that the definitions of "road" and "highway" were broad enough to include footpaths, it found this particular use was permissive.

The Colorado Supreme Court, reaffirming an earlier decision "that the scope to be given the word ["road"] depends upon the context in which it appears," see Hale v. Sullivan, 146 Colo. 512, 362 P.2d 402 (1961), indicated that it did "not believe that the legislature intended an eighteen-inch footpath

in a populated, residential, urban area to be considered a 'road' so as to permit it to be declared a public highway." *Simon*, 687 P.2d at 1302. Significantly, the court "recognize[d] that section 43-2-201(1)(c) does not require the city to expend funds or otherwise demonstrate its willingness to accept highways established by prescription." *Id.* at 1303. Nonetheless, the court observed that "... evidence that the city had maintained the footpaths or included them on a map of the city's street system would be a strong indication that the paths had acquired status as public highways." *Id.* (footnote omitted).

Although nothing in the *Simon* opinions specifically addressed standing, the Colorado courts obviously were of the view that the plaintiffs, as users, had established a sufficient "personal stake" to render them effective litigants inasmuch as they had demonstrated that they would suffer an "injury in fact" if precluded from using the footpaths in the future.

By analogy, we hold that in this case the United States has adequately demonstrated that it, its agents, lessees and public users of the White River National Forest will continue to suffer an injury in fact which may be redressed by a favorable court decision. Here, the United States pleaded that: (1) it "owns and controls all property crossed by the road that is the subject of this case ... to the extent that such road does not cross lands owned by the previously enumerated Defendants;" (2) "[t]he road provides the citizens of the United States and others with an essential, necessary, and unique access to lands owned by [the] United States including but not limited to the White River National Forest;" and (3) "as both a property owner, whose land is crossed by the subject road and is [sic] a property owner whose land is accessed by the subject road, the United States of America may claim an interest in the subject matter of this litigation that must be asserted through this case." The district \*1065 court indicated that, "concerning this road, which does cross federal land, they [the United States] do have an interest. [T]he interest does not have to be fee simple title. It can be an interest in the nature of an easement." (R., Vol. I, Tab 36, p. 29).

The United States, as a user of this roadway which crosses and accesses its property, suffers injury which is traceable to the roadway's obstruction and which may be redressed by a decision declaring this a public highway. We hold that the United States, a proper party-plaintiff in the district court, has standing to bring this appeal challenging the district court's ruling.

During oral argument, the issue arose concerning whether the roadway's blockage and continued obstruction from 1960 to date served to bar an adverse possession claim, based on the doctrine of laches. We have held that a state's statute of limitations does not apply "to an action brought by the federal government to vindicate public rights or public interests, absent a clear showing of contrary congressional intent." *Marshall v. Intermountain Elec. Co.*, 614 F.2d 260, 262 (10th Cir.1980). See also *United States v. Sumnerlin*, 310 U.S. 414, 416, 60 S.Ct. 1019, 1020, 84 L.Ed. 1283 (1940); *Chesapeake & Delaware Canal Co. v. United States*, 250 U.S. 123, 125-27, 39 S.Ct. 407, 407-08, 63 L.Ed. 889 (1919). "[A]s to its governmental function, the doctrine of laches does not apply to the United States...." *Thompson v. United States*, 312 F.2d 516 (10th Cir.1962), cert. denied, 373 U.S. 912, 83 S.Ct. 1303, 10 L.Ed.2d 414 (1963). We hold that the parties and issues are properly before us on appeal.

## II.

[5]  Turning to the merits, we must determine the sole substantive issue presented on appeal: whether a public right-of-way was established by adverse possession over the four privately-owned parcels.

In 1929, citizens of Garfield County petitioned the Board of County Commissioners requesting that the Board "cause to be laid out and opened a County road" from "the cemetery generally north to the White River National Forest." The petition stated that "we, the owners of the land through which said road is sought to be laid out ... hereby agree to give the right of way through our lands as shown by the plat accompanying this petition, and relinquish all claims for damage by reason thereof." The second page of the petition, upon which the course of the road was to be depicted, was not completed.

Pursuant to the petition, the Board passed a resolution declaring the road a public highway, the width extending twenty feet on either side of an unknown center line. No objections to this declaration were lodged by the landowners. Thereafter, the Board enacted a second resolution ratifying its earlier declaration that the road be considered a public highway.

In 1959, Buster Brown, who then owned the four parcels in question, requested that the Board abandon the road. The Board unanimously determined that the county road would not be abandoned. Notwithstanding this, in 1960 Brown blocked the road by erecting a gate just north of the cemetery. Since that time, public use of the road has remained obstructed by the owners of the four parcels.

Under Colorado law, public highways include "[a]ll roads over private lands that have been used adversely without interruption or objection on the part of the owners of such land for twenty consecutive years." Colo.Rev.Stat. § 43-2-201(1)(c) (1984). Though the testimony presented by the government was minimal, one witness, Mr. Edward Jordan, did indicate that the "people used it [the road]. The potato cellars were up that road." (R., Vol. VI, p. 203). He also testified that he and others used the road for hiking, to collect mistletoe, hunt grouse, and fish. *Id.* at pp. 194-95, 197. One additional government witness, Rex Wells, a BLM employee, testified over objection by defendants-appellees that this road was historically constructed for use as a logging road. (R., Vol. IV, p. 30). Though sparse, the record does contain evidence that this roadway was used from the time it was constructed through the date of its obstruction.

We now address whether the use of this roadway was adverse to the landowners. The landowners argue that, because the land \*1066 was vacant, unenclosed, and unimproved, use in this case was permissive. *See, e.g., Simon, 651 P.2d at 420* ("use by the public of vacant and unoccupied land by travel over it, even after the period of twenty years, is regarded merely as a permissive use"); *Durbin v. Bonanza Corp., 716 P.2d 1124, 1129 (Colo.Ct.App.1986)* (where land involved is vacant, unenclosed, and unoccupied, use is presumed permissive). The landowners rely on the district court's oral findings of fact and conclusions of law wherein the court stated that "from the testimony it's uncontradicted that permission was in fact implicit for the people in the community to cross over properties and for that matter to take things ... from the land that they made no claim of owning." In our view, the testimony of Mr. Jordan does not support the district court's finding of permissive use.

The United States argues that use of a right-of-way which begins as permissive will continue as such only until the user gives the landowner notice or explicit disclaimer that the user is claiming an exclusive legal right and is possessing in an adverse or hostile manner. *See Lovejoy v. School District No. 46, 129 Colo. 306, 269 P.2d 1067, 1069 (1954); Segelke v. Atkins, 144 Colo. 558, 357 P.2d 636, 638 (1960)*. Permissive use continues until the user "does some act, or suffers some act to be done, by way of asserting his ownership over the land thus used. In other words, there must be something more than mere travel over unenclosed lands by the public, in order to establish a public highway over the same by prescription." *Simon, 651 P.2d at 420-41* (citing *People ex rel. Mayer v. San Luis Valley Land & Cattle Co., 90 Colo. 23, 5 P.2d 873 (1931)*). The United States asserts that the Board's 1929 resolutions provide the requisite notice that the public was openly and notoriously claiming the road as a public right-of-way. We agree and hold that the twenty-year period for establishing adverse possession began to run no later than the date the County enacted its 1929 resolutions declaring its intention to openly and notoriously claim the road as a public right-of-way.

[6]  While the district court found that the 1929 resolutions had not been properly recorded, <sup>FN3</sup> the United States asserts that, despite the defects, the resolutions can be relied upon to show notice in furtherance of an adverse possession claim. We agree. We view the district court's discussion of improper recording inapplicable in determining adverse possession. Section 43-2-201(1)(c) does not require that public use be based on color of title or properly recorded resolutions. The 1929 resolutions serve only to illustrate notice of adverse, open, and notorious use by the public. Further, Brown's attempt to have the road declared abandoned in 1959 demonstrates awareness of the public's ownership claim.

<sup>FN3</sup>. The district court stated: "Likewise, while I agree that substantial compliance with the statute in place by the county commissioners in 1929, statute 1306, would suffice, I

fail to see how there has been proof of substantial compliance where the existence vel non of the plat map and legal description is not present ... [I]t's the failure to record properly in the grantor/grantee index, the failure to record and file the plat and map of and legal description or such that the plaintiffs have the problems of proof that they presently have."

Moreover, the record does not contain any evidence that the private land crossed by the road in question was, during the requisite twenty years, vacant, unenclosed and unoccupied. Mr. Jordan testified that he observed: a landowner irrigating, a sheepherder, and an individual who homesteaded in the area. (R., Vol. VI, p. 199). There was also a cabin which was homesteaded by a man who operated a sawmill in the area, though this individual apparently died sometime before 1929. *Id.* at p. 196. Additionally, Mr. Jordan indicated that "[t]here might have been fences, but they weren't important to me." *Id.* at p. 197. He recalled seeing people on the road "right over the fence irrigating." *Id.* at p. 207. Therefore, "the public is aided by a presumption that the character of the use is adverse where such use is shown to have been made for a prescribed period of time." *Simon*, 651 P.2d at 420 (citing *Mahnke v. Coughenour*, 170 Colo. 61, 458 P.2d 747 (1969)).

[7]  Finally, the landowners assert that under Colorado law, "[a] right of way for a public road ... must be confined to a reasonably definite and certain line." \*1067 *Sprague v. Stead*, 56 Colo. 538, 139 P. 544, 545 (1914). <sup>FN4</sup> In *Sprague*, the court found that the road in question did not have "reasonable certainty of limits and direction," but the court remanded only to have the district court take additional testimony in order to definitely describe the roadway. See also *Wright v. Horse Creek Ranches*, 659 P.2d 705, 709 (Colo.Ct.App.1982), *aff'd in part, rev'd in part*, 697 P.2d 384 (1985).

<sup>FN4</sup>. The landowners rely on the following language from the district court to support their contention that no reasonably certain line was referenced: "I have no idea where the road claimed may have been, nor for that matter whether there is a compliance when there is the change of road in 1910. That it stayed within substantially the same line."

According to the landowners, the United States describes the road as crossing Sections 29, 20, 17, 16, 9, 4, and 3. <sup>FN5</sup> Yet, as indicated on the 1893 plat, the road crosses Sections 20, 17, 16, 9, 10, and 3, a description which omits Section 29 (though the disputed portion of the road commences in this Section), omits Section 4, and adds Section 10. Further, the Garfield County Commissioners' minutes allegedly establish the road as crossing Sections 20, 17, 16, 10, 9, and 3, omitting Sections 4 and 29.

<sup>FN5</sup>. The Board's resolution describes the road as follows: Said road is described as beginning at the North limits of the Town of New Castle, in Garfield County, and following the present road from the Town of New Castle north to the Cemetery; and thence continuing from the end of this road at or near the Cemetery in a general northerly direction, through Sections 20, 17, 16, 19, 9 and 3 ... to the boundary of the White River National Forest.

The United States notes that the wagon road depicted in the 1893 plat generally follows the orientation of the present road. However, it acknowledges that the southernmost portions of the wagon road are depicted as further west of the present road and the northernmost portions of the wagon road are located on the plat as further east of the present road.

"It has long been the law that the course of a right of way may be altered without destruction of the right of way. That may be by mutual consent, evidenced by acquiescence, or it may be the result of changes resultant from natural causes." *Wilkenson v. Department of Interior*, 634 F.Supp. 1265, 1275 (D.Colo.1986). Indeed, in this case, the governments presented testimony that any road is

subject to changing course. One government witness testified to realignment of the road in areas along a creek where the road had washed out. Furthermore, the landowners, aware of the public's use of the road during the twenty-year period, acquiesced in such use, notwithstanding the fact that the road may have changed course. The governments also presented testimony of a long-time resident who stated that the present location of the right-of-way accords with its historic location.

In 1910, the County approved a proposal to contribute funds for the construction of a "proposed new road" from Highland Cemetery north across Sections 29 and 20 to a point of intersection with the old road. It is the purported relocation of the road in 1910 to which the district court apparently referred when it expressed uncertainty as to the road's location "when there is the change of road in 1910." However, the question of whether the right-of-way may have substantially shifted location in 1910 is irrelevant in this appeal. We hold that from 1929 onward, the right-of-way was confined to a *reasonably* definite and certain line.

We observe that the United States Forest Service has completed a survey of the present roadway which is only accurate to plus or minus five meters (16.4 feet). The government's surveyor testified that this survey is not the most accurate manner by which to locate a road. (R., Vol. IV, p. 92). If, upon retrial, it is determined that the subject roadway is a public road, the United States should be directed, at its own cost, to undertake an accurate and qualified survey of the roadway limited to its actual use and prepare a plat for filing therewith.

We REVERSE the district court's finding/conclusion that the evidence is uncontradicted that the public use of the roadway was permissive rather than adverse, and REMAND\*1068 for a full evidentiary hearing on that issue and all other matters relevant thereto.

**REVERSED and REMANDED.**

C.A.10 (Colo.), 1993.

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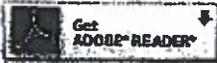
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- 46 SOUTHWEST FOUR WHEEL DRIVE ASSOCIATION, et al., Plaintiffs-Appellants, v. BUREAU OF LAND MANAGEMENT, et al., Defendants-Appellees., 2003 WL 23945656, \*23945656+ (Appellate Brief) (10th Cir. Oct 16, 2003) **Answering Brief of Federal Appellees** (NO. 03-2138) ★ ★ HN: 7 (F.2d)
- 47 Russell Charles DAILEY, Defendant/Appellee, v. UNITED STATES OF AMERICA, Plaintiff/Appellant., 1993 WL 13130088, \*13130088 (Appellate Brief) (11th Cir. Jul 30, 1993) **Brief of Appellee** (NO. 92-6910) ★ ★
- 48 Kim MCINTYRE and Steve McIntyre, Petitioners, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, Colorado, Respondent., 2003 WL 24172904, \*24172904+ (Appellate Brief) (Colo. Jun 23, 2003) **Answer Brief** (NO. 02SC803) ★ ★ HN: 5,6 (F.2d)
- 49 Kim MCINTYRE and Steve McIntyre, Petitioners, v. BOARD OF COMMISSIONERS, Gunnison County, Colorado, Respondent., 2003 WL 24172903, \*24172903+ (Appellate Brief) (Colo. May 22, 2003) **Petitioners' Opening Brief on Certiorari Review** (NO. 02SC803) ★ ★ HN: 5,6,7 (F.2d)
- 50 Kim MCINTYRE and Steve McIntyre, Petitioners, v. BOARD OF COMMISSIONERS, Gunnison County, Colorado, Respondent., 2003 WL 24172905, \*24172905+ (Appellate Brief) (Colo. May 07, 2003) **Petitioners' Reply Brief on Certiorari Review** (NO. 02SC803) ★ ★ HN: 5,6,7 (F.2d)
- 51 CAMP BIRD COLORADO, INC., a Colorado corporation, Appellant, v. THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF OURAY, COLORADO, Appellee., 2009 WL 630663, \*630663+ (Appellate Brief) (Colo.App. Feb 04, 2009) **Answer Brief** (NO. 08CA852) ★ ★

- ☐ 52 ETC ENTERPRISES, LLC, Appellant, v. Roger D. SCHLESSELMAN and Sheila Schlesselman, Appellee., 2005 WL 5228688, \*5228688+ (Appellate Brief) (Colo.App. Mar 08, 2005) **Answer Brief** (NO. 04CA1698) ★ ★ HN: 5,6,7 (F.2d)
- ☐ 53 Kim McINTYRE and Steve McIntyre, Appellants, v. BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, Colorado; Sierra Minerals Corp; and Omya, Inc., Appellees., 2003 WL 25481940, \*25481940+ (Appellate Brief) (Colo.App. Apr 25, 2003) **Answer Brief** (NO. 01-CA-2408) ★ ★ ★ HN: 5,6,7 (F.2d)
- ☐ 54 Kim McINTYRE and Steve McIntyre, Appellants, v. BOARD OF COMMISSIONERS, Gunnison County, Colorado; Sierra Minerals Corp.; and, OMYA, Inc., Appellees., 2002 WL 34153003, \*34153003+ (Appellate Brief) (Colo.App. Jul 17, 2002) **Appellants-Defendants' Reply Brief** (NO. 01-CA-2408) ★ ★ ★ HN: 5,6,7 (F.2d)
- ☐ 55 BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MORGAN, Plaintiff/Appellee, v. Elmer and Miriam KOBABEL, Defendants/Appellants; and Delbert, Wade E., and E. Todd Castor; Karen S. Kelley, and the Riverview Cemetery Court Use Only Association, Defendants., 2002 WL 34150285, \*34150285+ (Appellate Brief) (Colo.App. Jun 12, 2002) **Appellee's Answer Brief** (NO. 01CA2450) ★ ★ HN: 5,7 (F.2d)

#### Trial Court Documents (U.S.A.)

##### Trial Pleadings

- ☐ 56 PAUL STATEN AND ISLAND ENTERPRISES, INC., Plaintiffs, v. DELAWARE COUNTY, a political subdivision of the State of Oklahoma, et al., Defendants., 2004 WL 3342376, \*3342376 (Trial Pleading) (N.D.Okla. Aug 02, 2004) **Defendant Kent Abbott's Motion to Dismiss Plaintiffs' Complaint** (NO. 04-CV-504-(E)(J)) ★ ★ HN: 2 (F.2d)

##### Trial Motions, Memoranda and Affidavits

- ☐ 57 Oleg POGREBNOY, Plaintiff, v. Vitaly MATUSOV; Marina Matusov; Russian Newspaper Distributorship; Alexander Ginsburg; Yelena Ferdman; Arina Doe; Yefim Doe; Alexander Doe; Alexander Doe; Vladimir Doe; News-Type Service, Inc.,(aka NTS); John & Jane Doe; John and Jane Doe Inc., Defendants. Russian Newspaper Distribution Inc., Counter Plaintiff, v. Oleg Pogrebnoy et all, Counter Defendants., 2009 WL 698810, \*698810 (Trial Motion, Memorandum and Affidavit) (C.D.Cal. Feb 17, 2009) **Notice of Motion and Memorandum of Points and Authorities in Support of Counter Defendant's Motion to Dismiss Defendant's Counterclaim with Prejudice under 12(B)(1)** (NO. CV08-1080-PA(SSX)) ★ ★ HN: 2 (F.2d)
- ☐ 58 Fred STEINER, et al., on behalf of themselves and all others similarly situated, Plaintiff, v. ABC, INC., et al., Defendants., 2005 WL 4133086, \*4133086 (Trial Motion, Memorandum and Affidavit) (C.D.Cal. Apr 04, 2005) **Reply in Support of Application by Counsel for Songwriter Objectors for an Award of Attorneys' Fees and Costs and Declarations in support Thereof** (NO. ADX, CV-00-5798-FMC) ★ ★
- ☐ 59 ROCKY MOUNTAIN CHRISTIAN CHURCH, a Colorado nonprofit corporation, et al., Plaintiffs, United States of America, Intervenor Plaintiff, v. BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY, Colorado, Defendant., 2006 WL 6136264, \*6136264 (Trial Motion, Memorandum and Affidavit) (D.Colo. Dec 20, 2006) **Colo. R. Civ. P. 106(a)(4) Answer Brief and Response to Motion for Partial Summary Judgment on Third Claim for Relief** (NO. 06-CV-00554-REB-BNB) ★ ★ HN: 7 (F.2d)
- ☐ 60 UNITED STATES OF AMERICA ex rel. Albert D. Campbell, Plaintiff, v. LOCKHEED MARTIN CORPORATION and Martin Marietta Corporation, Defendants., 2002 WL 32948579, \*32948579 (Trial Motion, Memorandum and Affidavit) (M.D.Fla. Oct 31, 2002) **Memorandum of Points and Authorities in Support of the United States' Motion to Strike Defendants' Affirmative Defenses** (NO. 695-CV-549-ORL-28DAB) ★ ★
- ☐ 61 UNITED STATES OF AMERICA, Plaintiff, v. Christl R. SULZBACH, Defendant., 2008 WL

- 2913982, \*2913982 (Trial Motion, Memorandum and Affidavit) (S.D.Fla. May 19, 2008) **Memorandum in Support of United States' Motion to Strike Affirmative Defenses** (NO. 07-61329-CIV-MARRA) ★
- 62 UNITED STATES OF AMERICA, Plaintiff, v. \$290,000.00 IN UNITED STATES CURRENCY, more or less, Defendant., 2005 WL 3173076, \*3173076 (Trial Motion, Memorandum and Affidavit) (D.Kan. Oct 21, 2005) **Plaintiff United States' Motion to Compel Discovery of Tax Returns from Claimant Yvette Delgado** (NO. 04-1118-JTM) ★ ★
- 63 UNITED STATES OF AMERICA, Plaintiff, v. \$44,060.00 IN UNITED STATES CURRENCY, More or less, Defendant., 2004 WL 2157770, \*2157770 (Trial Motion, Memorandum and Affidavit) (D.Kan. Apr 23, 2004) **United States' Response to Claimant Chris Dinh's Motion to Dismiss** (NO. 03-1296-MLB) ★ ★
- 64 Trina Lynn WEBB, Plaintiff, v. BOB SMITH CHEVROLET, INC., Unknown Defendants, K.B.I., Inc., and Joseph Kenneth Borders, Defendants., 2005 WL 3703104, \*3703104 (Trial Motion, Memorandum and Affidavit) (W.D.Ky. Nov 04, 2005) **Defendant's Motion for Summary Judgment** (NO. 304-CV-66-H) ★ ★
- 65 UNITED STATES OF AMERICA ex rel. Natural Resources Defense Council, et al., Plaintiffs, v. LOCKHEED MARTIN CORPORATION, et al., Defendants., 2005 WL 3817549, \*3817549 (Trial Motion, Memorandum and Affidavit) (W.D.Ky. Apr 13, 2005) **Nrdc Relators' Motion to Strike Affirmative Defenses** (NO. 599CV-170-M) ★ ★
- 66 In re: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION: UNITED STATES OF AMERICA ex rel. Ven-a-Care of the Florida Keys, Inc., et al., v. BOEHRINGER INGELHEIM CORP., et al., 2008 WL 749974, \*749974 (Trial Motion, Memorandum and Affidavit) (D.Mass. Feb 11, 2008) **United States' Memorandum In Support of Motion to Strike Certain Affirmative Defenses** (NO. 107CV1024848) ★ ★ HN: 1 (F.2d)
- 67 SOUTHWEST FOUR WHEEL DRIVE ASSOCIATION, et al., Plaintiffs, v. BUREAU OF LAND MANAGEMENT, et al., Defendants, The Wilderness Society and New Mexico Wilderness Association, Intervenors., 2002 WL 34389707, \*34389707+ (Trial Motion, Memorandum and Affidavit) (D.N.M. Jun 14, 2002) **Federal Defendants' Memorandum in Support of Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment** (NO. 00-799LH/DJS-ACE) ★ ★
- 68 UNITED STATES OF AMERICA, Plaintiff, v. UNITED TECHNOLOGIES CORPORATION, Defendant., 2003 WL 24272565, \*24272565 (Trial Motion, Memorandum and Affidavit) (S.D. Ohio Oct 24, 2003) **Plaintiff's Motion for Judgment on the Pleadings on Defendant's Seventeenth Affirmative Defense or, in the Alternative, Motion in Limine to Preclude Evidence at Trial on Defendant's Seventeenth ...** (NO. C-3-99-093) ★
- 69 Karen WALLER, Plaintiff, v. UNITED OF OMAHA LIFE INSURANCE COMPANY, Defendant., 2006 WL 2503262, \*2503262 (Trial Motion, Memorandum and Affidavit) (E.D.Okla. Jul 21, 2006) **Defendant's Motion to Dismiss and Brief in Support** (NO. CIV06-029-SH) ★ ★
- 70 Karen WALLER, Plaintiff, v. UNITED OF OMAHA LIFE INSURANCE COMPANY, Defendant., 2006 WL 2580869, \*2580869 (Trial Motion, Memorandum and Affidavit) (E.D.Okla. Jul 21, 2006) **Defendant's Motion to Dismiss and Brief in Support** (NO. CIV06-029-SH) ★ ★
- 71 STATE OF OKLAHOMA, et al., Plaintiffs, v. TYSON FOODS, Inc., et al., Defendants., 2007 WL 5366913, \*5366913+ (Trial Motion, Memorandum and Affidavit) (N.D.Okla. Mar 12, 2007) **Motion of Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-vantress, Inc., Simmons Foods, Inc., Willow Brook Foods, Inc., Cal-Maine Food, Inc., Cal-Maine Farms, Inc., Peterson Farms, ...** (NO. 405CV00329) ★ ★ HN: 2 (F.2d)
- 72

- ☐ 71 UNITED STATES OF AMERICA, Plaintiff, v. PLAINS MARKETING, L.P., Defendant., 2003 WL 24859791, \*24859791 (Trial Motion, Memorandum and Affidavit) (N.D.Okla. May 09, 2003) **Plaintiff's Memorandum in Support of Motion to Strike Affirmative Defenses** (NO. 02-CV-976-E, M) ★ ★
- ☐ 73 Dwight W. BIRDWELL, Plaintiffs, v. Charlie ADDINGTON, et al., Defendants, Melvina Shotpouch, et al., Third Party Plaintiffs, v. Garland Eagle, Rex Earl, Starr, Jennie L. Battles, George Thomas Ervin Rock Tina Jordan, Billy Hughes, And Denise Honowa, Third Party Defendants., 2000 WL 35316358, \*35316358 (Trial Motion, Memorandum and Affidavit) (N.D.Okla. Mar 10, 2000) **Brief in Support of Motion to Dismiss The Cross-Claims of Defendant Melvina Shotpouch by Defendant Billy Heath** (NO. 99-CV-156, B) ★ ★
- ☐ 74 Dwight W. BIRDWELL, and Barbara Starr Scott, et al., Consolidated Plaintiffs, v. Charlie ADDINGTON, et al., Consolidated Defendants., 2000 WL 35316339, \*35316339 (Trial Motion, Memorandum and Affidavit) (N.D.Okla. Jan 04, 2000) **Brief in Support of Motion to Dismiss the Cross-Claims of Defendant Shotpouch By Defendants Housing Authority of The Cherokee Nation, Sam Ed Bush, Stanley Joe Crittenden, and Aleyene Hogner** (NO. 99-CV-156, B) ★ ★
- ☐ 75 Kenneth MCLAUGHLIN, Jr. and Myra McLaughlin, husband and wife, Thomas Wayne Butler as Individuals as Individuals and on behalf of all others similarly situated, Plaintiffs, v. AMERICAN FIDELITY ASSURANCE COMPANY, a Domestic Corporation, Defendant., 2010 WL 5765568, \*5765568 (Trial Motion, Memorandum and Affidavit) (W.D.Okla. Sep 24, 2010) **Defendant's Motion for Summary Judgment and Brief** (NO. 09CV01163) ★ ★ HN: 2 (F.2d)
- ☐ 76 UNITED STATES OF AMERICA, v. Shilba BENNETT., 2005 WL 5900226, \*5900226 (Trial Motion, Memorandum and Affidavit) (E.D.Pa. Nov 23, 2005) **Defendant's Sentencing Memorandum and Motion for Downward Departure** (NO. 05-325-01) ★ ★
- ☐ 77 UNITED STATES OF AMERICA, Plaintiff, v. Gregory J. COLSON, Defendant., 2005 WL 3829140, \*3829140+ (Trial Motion, Memorandum and Affidavit) (S.D.Tex. Feb 04, 2005) **Plaintiff's Reply Brief** (NO. H-04-3154) ★ ★ ★
- ☐ 78 In re NOTRE DAME INVESTORS, INC., Debtor. Wilson Refining, L.P., Appellant, v. European and Allied Commerce, Ltd., Appellee., 2006 WL 4056253, \*4056253 (Trial Motion, Memorandum and Affidavit) (W.D.Tex. Dec 19, 2006) **Appellee European and Allied Commerce, Ltd.'s Motion to Dismiss Appeal** (NO. SA-06-CA-0811-WRF) ★ ★
- ☐ 79 UNITED STATES OF AMERICA, Plaintiff, v. NEWPORT NEWS SHIPBUILDING, INC., Defendant., 2003 WL 22331130, \*22331130 (Trial Motion, Memorandum and Affidavit) (E.D.Va. Apr 10, 2003) **Plaintiff's Motion to Strike Affirmative Defenses** (NO. 103CV142-A) ★ ★ HN: 1 (F.2d)
- ☐ 80 In re: COUNTY OF ORANGE, a political subdivision of the State of California, Debtor., 1993 WL 13096191, \*13096191 (Trial Motion, Memorandum and Affidavit) (Bankr.C.D.Cal. Sep 11, 1993) **Opposition to Motion for Order Approving County Administered Accounts Settlement Agreement** (NO. BANKRUPTCYSA94-22272) ★ ★

Glenwood Springs 0998.

# The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at **Glenwood Springs, Colorado,** has been deposited in the General Land Office, whereby it appears that full payment has been made by the claimant **Susan V. Harris** according to the provisions of the Act of Congress of April 24, 1820, entitled "An Act making further provision for the sale of the Public Lands" and the acts supplemental thereto, for the southwest quarter of the southwest quarter of Section seventeen and the north half of the northwest quarter and the southeast quarter of the northwest quarter of Section twenty in Township five south of Range ninety west of the Sixth Principal Meridian, Colorado, containing one hundred sixty acres,

according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said claimant and to the heirs of the said claimant the Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, therunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, **William H. Taft**

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the **FIFTEENTH** day of **JANUARY** In the year of our Lord one thousand nine hundred and **THIRTEEN** and of the Independence of the United States the one hundred and **THIRTY-SEVENTH.**

By the President:

By

*Wm. H. Taft*  
Secretary,  
*H. P. DeLoach*  
Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number **310108**

WARRANTY DEED.

This Deed, Made this 22nd day of January, in the year of our Lord one thousand nine hundred and Twelve BETWEEN Charles F. Harris and Susan V. Harris of the County of Garfield, and State of Colorado, of the first part, and

John C. Peterson of the County of Adams, and State of Colorado, of the second part:

WITNESSETH, That the said parties of the first, for and in consideration of the sum of One Dollar and other good and valuable consideration Dollars, to the said parties of the first part in hand paid by the said part 2 of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs and assigns forever, all the following described lot or parcel of land, situate, lying and being in the County of Garfield, and State of Colorado, to-wit: The southwest quarter of the northwest quarter (S.E. 1/4 N.W. 1/4) of Section No. Thirteen (13), in Township Five (5) South, Range No. Ninety one (91) West of the Sixth Principal Meridian. There is also hereby granted the right to use at all times for road purposes the present travelled wagon road along East Elk Creek as the same is now laid out and used or as the course of the same may from time to time be changed or newly constructed over, through and across any and all lands of said parties of the first part, or either of them in Sections 13 and 24 T. 5 S., R. 91 W. 6 E. P. M., and over, through and across any other lands owned by either of said parties of the first part traversed by said road at the present time or as the same may be changed or newly constructed. The object of this grant being to insure the said party of the second part, his heirs, assigns and legal representatives, a throughfare from lands owned by said party of the second part in said Section 13, T. 5 S., R. 91 W. 6 E. P. M., to the County Road crossing said East Elk Creek near its mouth. This grant to endure until such time as there shall be constructed, accepted and opened a public county road up said East Elk Creek from the said above mentioned county road to the lands of the said party of the second part.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the said parties of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances, TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the said party 2 of the second part, his heirs and assigns forever. And the said Charles F. Harris and Susan V. Harris

parties of the first part, for themselves, their heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said party 2 of the second part, his heirs and assigns, that at the time of the sealing and delivery of these presents, they are well seized of the premises above conveyed as of good, sure, perfect absolute and indefeasible estate of inheritance, in law, in fee simple, have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of whatever kind or nature soever.

and the above bargained premises, in the quiet and peaceable possession of the said party 2 of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part shall and will WARRANT AND FOREVER DEFEND.

IN WITNESS WHEREOF, The said parties of the first part has hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in Presence of Charles F. Harris Susan V. Harris

STATE OF COLORADO, County of Garfield, I, Christian N. G. Hubber, do hereby certify that Charles F. Harris and Susan V. Harris, who are

personally known to me to be the persons whose names subscribed to the annexed Deed, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this 20th day of January, A. D. 1912.

My Commission Expires March 13, 1913 Christian N. G. Hubber Notary Public, New Castle, Colo.

Filed for record the 23 day of January, A. D. 1912 at 4:00 P.M. By C. L. Hubber Deputy.