

14ER CLOSES

More trails cut off public access amid growing liability concerns.

The Colorado Springs Gazette · 13 Sep 2021 · A1

Another Colorado 14,000-foot summit has closed to hikers. A sign has been posted along the trail to Mount Lindsey, which falls on the San Luis Valley's sprawling Trinchera Blanca Ranch. The sign marks the mountain as private and warns: "PUBLIC ACCESS IS NOT ALLOWED."



The move follows another conflict this summer on mounts Lincoln, Democrat and Bross, the fourteeners making up the heavily trafficked route known as Decalibron that was closed until recently. In a statement to The Gazette, the ranch, owned by billionaire investor and philanthropist Louis Bacon, cited the same liability concerns of those mining claim owners across the Mosquito Range. Colorado Fourteeners Initiative Executive Director Lloyd Athearn and others involved say angst has simmered since 2019, when a federal court ruled in favor of a cyclist "seriously injured" at the Air Force Academy. James Nelson was awarded \$7.3 million after he "struck a sinkhole" and "was flung onto the asphalt path," according to the ruling.

That decision, Athearn said, "has really caused a lot of lawyers and insurance people to sit up and say, 'Oh my

god, the protections we thought we had under the Colorado Recreational Use statute seem to have been whittled away substantially.”

Legislators adopted the statute to “make land and water areas available for recreational purposes by limiting (owners’) liability toward persons entering thereon for such purposes.”

In the Nelson case, the court identified an exception in the statute regarding “willful or malicious failure to guard or warn against a known dangerous condition.” The Air Force Academy was found to have “willfully ignored the dangerous condition on the path and chose not to take steps to warn or guard users like Mr. Nelson against that danger.”

This effectively “limited the scope” of the recreational use statute, according to Trinchera Blanca Ranch’s statement, “and increased landowner exposure.”

Last year, in a Colorado Mountain Club-led panel discussion about private property on fourteeners, landowners recognized unstable ground and unpredictable dangers across their mountains.

“We are in a very litigious society,” said Patrick Schilken, an attorney who during the discussion showed maps of his mining claims around Park County. “People will sue on anything for any reason, and I can’t be up there every day monitoring everybody that’s up there.”

Colorado Mountain Club’s Julie Mach said the peaks’ inherent threats posed “loopholes” in the recreational use statute.

“Where essentially,” she said, “even if landowners are providing free public access and are protected in a lot of ways, if there are hazards on the property, they still have this duty to warn.”

John Reiber, representing owners along Decalibron, told Colorado Mountain Club and Colorado Fourteeners Initiative last month that the mountains were open again after additional signs were placed and agreements made with the town of Alma to cover insurance.

Still, closures could return, said Mach, who has worked closely with Reiber over the years.

“I think it also comes down to the volume of use,” Mach said. “When there were a few dozen people climbing peaks on the weekends, (landowners) might’ve looked another direction. Now that we’ve got 300 people on a Saturday, it’s different. The likelihood and risks of potential lawsuits has increased.”

In his 12 years leading Colorado Fourteeners Initiative, Athearn said he has never heard of a private landowner getting sued by a hiker. In 2016, Athearn’s organization raised about \$50,000 and bought three mining claims high on Mount Shavano — a means to construct a better, safer summitting path — and has since posted signs about dangers at 14,000 feet.

“We certainly have felt that was sufficient protection” from liability, Athearn said.

The feeling, he said, is different at Mount Lindsey.

He said he and other partner groups are preparing to lobby for adjustments to the recreational use statute in the next legislative session.

“The good news is, I’m not aware of any other fourteeners that have these issues,” Athearn said.

Along with Lindsey, Shavano

and the trio representing Decalibron, he said he knew of two others privately held that concern hikers: Culebra Peak and Mount Sherman. The former is owned by a ranch that charges people to climb and the latter is owned

by a bankrupt company.

Once ownership is settled after an ongoing court battle over Sherman, Athearn hinted Colorado Fourteeners Initiative could pursue an acquisition similar to Shavano. But money isn't around to solve all issues, he said, underscoring the importance of new legal language.

In last year's panel discussion, Reiber and Schilken expressed their wish for hikers to have the same awareness of hunters, who are expected to ask for permission before crossing private land.

"That they know where they're at and they have the proper equipment to protect themselves," Reiber said. "I can't tell you how many times I've brought people down off of Lincoln who were not prepared." • A Colorado school is taking the classroom to legendary rivers of the Four Corners region.

Durango's Fort Lewis

College has greenlit the Fort Lewis on Water program, or FLOW. The idea is for rafting-savvy faculty and staff to guide students on the Chama River through northern New Mexico and the San Juan River through southeast Utah to provide an up-close look at the canyon landscapes and the stories they tell.

The curriculum will blend geology, biology, conservation and archaeology, said Andrew Gulliford, a longtime professor of history and environmental studies who has led river trips in the region.

"It's just a pretty exciting opportunity, especially with all this drought we're facing," he said. "We're gonna take the kids out and show them what these rivers are all about."

Gulliford is among alarmed onlookers expecting "a jarring decade" ahead when it comes to water in the West. In a year of record lows across major reservoirs and rivers, the FLOW program arrives at a pivotal time, he said.

"If we don't work to help this younger generation get an environmental consciousness now, they may not ever," Gulliford said. "You put people on the water for multiday trips, and they all of a sudden understand Leave No Trace ethics, and they really understand how important rivers are."

FLOW became possible when Fort Lewis bought a rafting company's boats and gear, along with that company's coveted permits for launch points along the rivers. • A scenic lake in western Colorado is poised to become the public destination admirers have long envisioned.

That's after the announcement of Sweetwater Lake entering the U.S. Forest Service portfolio.

A recent press release promised wildlife protection and new recreation access to the 488 acres in a remote pocket between Garfield and Eagle counties, backdropped by Flat Tops Wilderness. Previously, the shores had been privately held and feared to be in the crosshairs of development.

"Save the Lake" was the fundraising campaign waged by Eagle Valley Land Trust. Last year, in partnership with The Conservation Fund, the lake was saved to the tune of \$7.1 million.

Now, thanks to millions of more dollars from the Land and Water Conservation Fund, Sweetwater Lake has been transferred to White River National Forest. After decades-long shortages, Congress's move to fully restore that fund last summer was seen as critical for federal land managers to take control of the lake.

In the press release, U.S. Sen. John Hickenlooper praised the fund for preserving what he called "one of the largest and most pristine natural bodies of water in the Centennial State."

The release noted the area is "largely open to the public." The Forest Service is expected to launch a management plan to inform future recreation and conservation.