

Colorado Mountain Club supports Senate Bill 23-103

SB23-103 revises the Colorado Recreation Use Statute (CRUS) to better protect recreation on private lands.

Introduction

Outdoor recreation is an important part of Colorado culture and the economy, employing 125,000 workers and contributing \$11.6 billion to the state. While Colorado has large areas of public land available for recreation, privately owned land also plays an important role. The Colorado Recreational Use Statute (CRUS) recognizes this role for private property owners and provides liability protection to those that allow recreational use of their land free of charge. However, the current version of the CRUS, as interpreted by courts, leaves landowners vulnerable to liability for recreational injuries on their property. This had led to a chilling effect on landowners concerned about liability seeking to reduce their legal exposure by closing access to their land, including in areas where they had previously allowed public access. The Colorado Mountain Club (CMC) represents over 6,000 members of the outdoor recreation community around the state. CMC has been working with multiple stakeholders including the USFS, non-profits, private property owners, and local and state governments to address the problem at its source by revising the CRUS. The CMC has been directly involved in the drafting of SB23-103 and supports its adoption into law. Passing SB23-103 means better outdoor recreation access, and that benefits all residents and visitors of Colorado.

Background

This CRUS revision effort is in direct response to access closures triggered by the ruling in *Nelson v. United States*, 40 F.4th 1105 (10th Cir. 2022). In this case, the Tenth Circuit found the property owner, the US Air Force Academy, liable under Colorado Revised Statutes (C.R.S.) § 33-41-104(1)(a), of “willful or malicious failure to guard or warn against a known dangerous condition, use, structure, or activity likely to cause harm.” In this instance a biker on an unofficial path fell into a sinkhole and was severely injured. An Academy employee had noticed the sinkhole but did not report it or take steps to warn of or address the hazard, believing the path was the responsibility of Colorado Department of Transportation. Therefore, the court found this met the standard of “knowledge” and “willfulness,” negating the liability protections found in the CRUS.

While the CRUS applies statewide to all forms of recreation, two high profile closures of 14ers following this ruling illustrate the significance of the issue and the need for change. Mt Democrat and Mt Lincoln, part of the “Decalibron” loop in the Mosquito Range, were temporarily closed in 2021 in response to liability concerns. CMC has worked closely with the landowners and the Town of Alma on stewardship projects and public outreach campaigns, which has

helped to restore access to the area in the short-term. However, the overarching liability issue remains unresolved, and future closure is imminent without adequate legislative protections. Mt Lindsey, a 14er in the Sangre de Cristo Range, has been closed since September 2021, with the property owners specifically citing liability concerns.

Large properties at high elevation, such as those found on Decalibron Loop and Mt Lindsey, pose unique challenges when it comes to managing liability under the standard set by the CRUS as interpreted by the court in *Nelson*. They may be infrequently visited by the owner, natural forces readily erode trails, and any installed signage providing information or warning of hazards may be damaged or destroyed by rockslides, avalanches, or vandalism. Because a Property owners that are unwilling to bear the expense of regular inspection and maintenance of lands open for free public access may choose willful ignorance in an effort to avoid the “knowledge” standard of *Nelson*, or to prohibit access altogether. While this response is understandable, it is at odds with the public interest and the intent of CRUS, which is to protect private landowners who provide a public benefit by granting recreational access on their land.

Strengthening CRUS liability protection will not force private property owners to allow access, but it can provide greater assurance that should they choose to allow access, they will not be risking legal and financial jeopardy. There must be a balance between landowner and recreational user interests when allowing access to private property. Landowners cannot have a blank check regarding liability for known hazards on their property, but recreational users must accept a degree of inherent risk and exercise personal responsibility in exchange for free access. Without this balance, landowners may simply decide there is too much to lose, and respond by closing areas that previously saw thousands of visitors a year. Due to the patchwork nature of property boundaries, even large areas of public land could be functionally blocked from key access points if it requires crossing even a small section of private property.

CMC has collaborated with a variety of stakeholders to hear multiple perspectives and help build consensus regarding changes to the CRUS proposed in Senate Bill 23-103. This grassroots effort has included private property owners, the nonprofit Colorado Fourteeners Initiative, federal land managers, and state, county, and local officials. CMC has been directly involved in the drafting of the bill, from an initial meeting at the state capitol to a collaborative process to revise the draft language and produce the final proposed bill.

The Colorado Mountain Club supports Senate Bill 23-103, which will enhance outdoor recreation opportunities throughout the state. By strengthening liability protection for private landowners who allow free access to their property, Colorado’s outdoor culture and local economies will be bolstered. Senate Bill – 23-103 is the product of a collaborative process with a variety of stakeholders, balancing the interests of private property owners and recreational users. Senate Bill 23-103 includes the following important changes to the CRUS:

- Defines “inherent dangers or risks” as dangers or conditions that are part of any recreational purpose. This definition includes changing weather conditions, extreme

terrain, structures, and risks that result from a person engaging in recreation beyond their abilities. The bill also provides that a landowner that allows recreational use of their land without charge does not extend any assurance that the land is free from inherent dangers or risks.

- Clarifies the definition of “recreational purpose” and allows landowners to decide what types of recreation will be allowed on their land.
- Confirms that a landowner can determine where on their land certain types of recreation are allowed or not allowed, and that they may restrict recreation use on their land.
- A landowner may post signs or other warnings of dangerous conditions, uses, structures, or activities on the land. However, the landowner is not required to post any warning and the decision to post a warning, the failure to maintain the warning, or the failure to improve safety does not itself make a landowner liable for injury.

Senate Bill 23-103 has expanded on previous efforts to revise the CRUS through greater stakeholder engagement in the process, with sponsorship from Republican Senators Mark Baisley and Janice Rich and Representative Shannon Bird. The CMC continues to mobilize support from interested stakeholders, elected officials, and concerned citizens to see Senate Bill 23-103 passed into law.

References

Blevins, Jason. 2022. “Record surge for outdoor recreation economy in 2021 fuels push for legislation, federal office” Colorado Sun. November 10, 2022.

<https://coloradosun.com/2022/11/10/outdoor-recreation-economy-federal-office/>

Blevins, Jason. 2022. “Two privately owned Colorado 14ers are open to hikers thanks to a unique partnership. Will it last?” Colorado Sun. July 20, 2022.

<https://coloradosun.com/2022/07/20/colorado-14ers-lincoln-democrat-alma-partnership/>

Lopez, Meghan. 2021. “Mount Lindsey trail closed to public over liability concerns” Denver 7 News. September 9, 2021. <https://www.denver7.com/news/local-news/mt-lindsey-trail-closed-to-public-over-liability-concerns>