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Second poacher fined over \$18,000 Duo fined more than \$37,000

By Avery Martinez
Staff Writer

The second of two Oklahoma men who poached multiple elk while trespassing on private property received fines in court reaching over \$18,000.

Tanner J. England, of Oklahoma, plead guilty in court on July 18 to three counts of wildlife-fail to dress, three counts of wildlife-illegal possession, one count of hunting/trapping/fishing without permission and two counts of hunting without license-big game.

England received fines and costs totaling \$18,126.50.

England, who acted alongside another charged poacher, Dakota Epperly, trespassed and poached elk on private property in Archuleta County, according to Rod Ruybalid,

a wildlife manager and officer with Colorado Parks and Wildlife (CPW).

In an interview with The SUN on July 23, Ruybalid explained that England appeared in court and signed a plea agreement identical to Epperly's.

"These guys, I think, they were not lawful hunters, they were poachers. They were trying to find loopholes in the law and violate those and get away with it," Ruybalid told The SUN on July 11.

"They were pretty simultaneous in what they did and working together," Ruybalid said on July 23.

Epperly, as reported previously, plead guilty to multiple poaching charges and trespassing, and he received fines totaling \$19,126.50.

According to Ruybalid, Epperly

■ See Poaching A8

Draft decision would grant road access to site of proposed Village at Wolf Creek



Rendering courtesy Village at Wolf Creek

The above rendering imagines the visual impact of the proposed Village at Wolf Creek. A draft record of decision released on July 19 would give Leavell-McCombs Joint Venture road access to its privately held property atop Wolf Creek Pass, with that draft decision expected to be finalized this fall.

By Randi Pierce
Staff Writer

A new draft record of decision released by the Rio Grande National Forest (RGNF) on July 19 would allow road access to the private parcel that is proposed to become home to the Village at Wolf Creek.

The draft decision stems from a Jan. 12 letter from Leavell-McCombs Joint Venture (LMJV), the property's developers, to the RGNF seeking "immediate access" to the property.

The draft decision is currently open for

public review.

But, like other decisions released by the RGNF concerning the proposed project, opponents are indicating that the access will not be granted without a fight.

According to a press release from the RGNF, the land near the top of Wolf Creek Pass is a private parcel landlocked by federal lands.

The draft record of decision from the RGNF "is designed to provide reasonable access to the 288 acre parcel via a new road corridor. The proposed road would be approximately 1,610 feet in length and would

be within a 100-foot corridor with a total area of about 3.7 acres."

"This new draft decision provides the access that is legally required for private inholdings," said RGNF Supervisor Dan Dallas. "Furthermore, this access option was fully analyzed in 2014, so no new analysis is needed."

As the press release explains, the draft decision is based on Alternative 3, which was the so-called ANILCA alternative, named for the Alaska National Interest Lands Conser-

■ See Village A8

Photo courtesy Rod Ruybalid

Tanner England (left) and Dakota Epperly (right) pose with an elk that was poached on private property in Archuleta County. The two Oklahoma men were charged with multiple poaching charges and trespassing charges. This picture, one of several posted to Facebook, allowed authorities to link the duo to multiple crimes. Both men face losing hunting privileges for life, and received fines.



Jail campaign group opens meetings to public

By Avery Martinez
Staff Writer

A new jail could be on the ballot in November, and a county campaign committee has just recently opened its meetings to the public.

The Archuleta County Board of County Commissioners (BoCC) appointed a jail facilities and campaign committee in April; however, until recently the group's meetings were not open to the public, despite its role as an advisory committee to the BoCC.

Henderson had previously identified the group

to The SUN as the Facilities and Campaign Committee when it was first reported in a story on July 5.

Richard Vihel, chair of the group now calling itself Citizens for a New Jail, addressed the BoCC at a work session on July 17.

"The next thing we would need with regard to campaign funds—the board has previously indicated that you are willing to allocate \$5,000," Vihel said at the July 17 session.

"The county has agreed to pay for expenses involved with providing factual information to the public concerning the need for a new jail. For

instance, printing and a banner for a booth at the County Fair," Vihel wrote in an email to The SUN.

Archuleta County Attorney Todd Starr suggested that the county administrator draft a letter that outlined the use of the \$5,000 and the compliance with state law allowing public money spent on campaigns.

Vihel explained that his group wanted peace of mind about the money.

Starr explained that, from his understanding, the group would not write a check, but instead bills for the items, such as yard signs, would come

■ See Jail A9

Multiple wildfires burning in county

By Randi Pierce and Avery Martinez
Staff Writer

Multiple fires are being tended to through Archuleta County.

Many of the fires involved multiple agencies including the U.S. Forest Service (USFS), Pagosa Fire Protection District (PFPD) and Archuleta County Emergency Management.

To report a new fire on federal lands, please contact the Durango Interagency Fire Dispatch Center at 385-1324.

For more information on the existing fires on public lands, contact the Pagosa Ranger District at 264-2268.

Spruce Fire

The Spruce Fire, found early on July 24, was approximately 10 acres in size as of Wednesday, according to the USFS. It was caused by lightning.

The fire is burning above Spruce Canyon near Mill Creek, about 4 miles east of Pagosa

Springs.

On Wednesday afternoon, the USFS reported that a line had been established around the fire perimeter with fire activity still present. Hose has been laid around the fire perimeter and an engine will be suppressing any hot spots along the line and mopping up.

"The Spruce Fire is burning along a ridge top in ponderosa pine and Gambel oak," a Tuesday press release from the USFS reads.

While one structure was initially threatened, the USFS reported Wednesday that no structures are currently threatened.

Resources involved with battling the Spruce Fire included the USFS, the PFPD and Archuleta County, according to the Tuesday release.

"Six loads of fire retardant were used to prevent the fire from dropping into Spruce Canyon," the Tuesday press release reads.

■ See Fires A10

May sales tax collections 1.52 percent higher than last year

By Avery Martinez
Staff Writer

Sales tax information for May has been released, with sales tax collections coming in at 1.52 percent higher than May of 2017.

The gross amount of sales tax collections for May in Archuleta County was \$778,028.52, according to a report issued on July 18 by Archuleta County Finance Director Larry Walton.

The Town of Pagosa Springs' share was \$388,240.26.

May 2018 was 1.52 percent higher than May of last year, an increase of \$11,639, the report reads.

■ See Sales A8



SUN photo/Randi Pierce

The river may be running low this summer, but there was water enough for the Friends of the Upper San Juan River to hold the CRUISE-A-THONg. The fundraiser, dubbed "A Race for the Average Joe," features a bike ride around town, flip-flop walk and float down the San Juan River in whatever type of inflatable device the participants choose.

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Village

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vation Act. That act, in part, grants private land owners surrounded by National Forest System lands a right of reasonable access.

The alternatives were analyzed for the final environmental impact statement completed for the Village at Wolf Creek access project in 2014. The other alternatives were the land exchange and a no-action alternative.

Dallas previously issued a record

Poaching

Continued from front

“... plead guilty to hunting on private property without permission, multiple counts of illegal possession of wildlife, multiple counts of waste of edible portions of wildlife, multiple counts of hunting elk without a proper and valid hunting license with fines and surcharges exceeding \$19,000.”

According to a case summary by Ruybalid, the case began when he received a report from the ranch manager for Rancho del Oso Pardo, located in Archuleta County near the New Mexico border, north of Chama, N.M.

“The ranch manager reported that he and his employees found three dead bull elk on ranch property,” the summary reads.

Upon further investigation, it was discovered that one bull elk was shot with an arrow, killing the elk, the report indicates.

“The head, antlers, and some of the meat were removed and taken,” the summary states.

A second bull elk, Ruybalid explained in the summary, had been shot and killed by an arrow “and left to rot.”

The summary further reads that with the second bull elk:

- “The only meat taken from this elk was the back straps (choice meat).

- “This elk was covered with tree branches in an attempt to conceal the carcass.

- “One antler was cut and broken off, which was found at the first elk kill site. The other antler remained on the elk.

- “The elk was a smaller bull with antlers that had 4 points on each side.”

A third bull elk carcass was found, the summary notes, in which only the head, cape and antlers were removed.

Ruybalid expressed to The SUN his ideas about England’s poaching activities.

“I’m pretty certain that he’s actually the shooter on one of the elk where just the back straps were taken and nothing else,” Ruybalid said to The SUN on July 23.

Ruybalid explained that both England and Epperly worked in conjunction to “cover it up,” referring to taking that piece of meat out and leaving the rest of the animal.

“The meat was left to rot,” the summary reads on the third bull elk.

Ruybalid told The SUN on July 11 that nothing could be done with the meat and carcasses of the elk found dead on the ranch.

Sometimes, the CPW takes meat samples off the carcasses for DNA testing to try to match them to other parts of the animal, Ruybalid explained.

But, in this case, no samples were taken because the testing process was not used, Ruybalid explained.

As far as the remainder of the carcasses of the elk were concerned, they smelt so bad, they were already decomposing “with flies and maggots” and at that point the ranch was all right with just letting the scavengers finish off the remains, Ruybalid explained.

In other cases where the meat and parts of an animal are salvageable, CPW will document evidence and donate the remaining parts to “someone in the community who would benefit from that meat,” Ruybalid explained on July 11.

Three carcasses were found, according to the summary, but complications on location arose.

of decision in 2015 approving a land exchange that would swap approximately 177 acres of privately held land to the RGNF in exchange for approximately 205 acres of National Forest System land managed by the RGNF. That exchange would provide LMJV with property fronting U.S. 160.

After being challenged in court by a number of conservation organizations working together, that decision was set aside nearly

two years later, in May of 2017, by U.S. District Court Judge Richard Matsch for the District of Colorado.

“This has been a long, complex project and I encourage folks to learn more about its status and review the new draft decision for themselves,” added Dallas. “It’s also important to know that the land exchange option, as the selected alternative, remains on the table pending resolution of the legal process.”

Ruybalid explained on July 23.

England was extradited to Colorado after being arrested by Oklahoma state game wardens, according to Ruybalid.

“So, they arrested him. My understanding was, they arrested him right off of his job site, I think he worked on an oil rig,” Ruybalid said.

“This prompted Epperly to drive to Colorado and turn himself in,” Ruybalid wrote in the summary.

Epperly pleaded guilty, according to the report, of hunting on private property without permission, multiple counts of waste of edible portions of wildlife, and multiple counts of hunting elk without a proper and valid hunting license.

Indications had been found in talks with Oklahoma wardens that the two had past experiences such as this incident, and were known to their local game wardens, Ruybalid explained on July 23.

Both men had previous criminal records outside wildlife charges, according to Ruybalid.

Both men face the possibility of losing their hunting and fishing privileges for life.

“Any suspension will be reciprocated in Oklahoma and 46 other states, as participating members of the Wildlife Violator Compact Agreement,” the summary reads.

These acts do not represent lawful hunters, according to the summary, who respect private property, care or use the meat from the animals they take and stay within their limits.

“This case is a great example where Colorado Parks and Wildlife Officers worked together with landowners and other wildlife agencies to catch and prosecute violators of wildlife law,” Ruybalid wrote in his summary.

The head and antlers of the elk were recovered and returned to Colorado, Ruybalid explained to The SUN.

Further, Ruybalid explained to The SUN, the CPW protects wildlife and it is important to the people who live in and visit Colorado, as well as to the state government.

“We take it pretty seriously,” Ruybalid said.

Ruybalid explained that if people choose to violate the law there could be significant consequences.

“We may not catch you every time or the first time, but we do catch up with people,” Ruybalid said.

The summary notes that employees of Rancho del Oso Pardo made “great witnesses” and reported the violations “promptly.”

This, in turn, according to the summary, helped CPW work with the District Attorney’s Office to successfully prosecute the case.

Ruybalid mentioned on July 23 that he was very appreciative of how thorough the District Attorney’s Office had been about the case and that it “also treated the wildlife violations of the case in a serious nature.”

“This allowed CPW to recover the monetary value (set in State Statute) of the wildlife illegally taken, on behalf of the people of Colorado, while assisting in protecting private property rights in Colorado,” the summary reads.

“They were hand in hand, and were both serious wildlife violators,” Ruybalid said on July 23.

Ruybalid further explained that while England and Epperly may have felt safe returning to Oklahoma after the incident, they were ultimately caught for their crimes.

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A final decision on the road access is expected in the fall.

LMJV’s six-page January letter acknowledges the ongoing lawsuit and that Matsch set aside the decision, but states, “Although the 2017 Order clouds the title to the Federal Exchange Parcel, it does not prevent development activity on the Private Land. However, the 2017 Order does mean that the Private Land presently constitutes an In-holding subject to the requirements of ANILCA.”

The letter is signed by Clint Jones, the project leader for LMJV.

The letter continues, “Regardless of how the pending appeal is decided, LMJV will require access to its Private Land. The Private Land is unaffected by the Litigation and is not changing hands as part of the Land Exchange.”

The letter also notes that no further analysis is needed because “The 2015 ROD and associated environmental impact statement ... has already thoroughly analyzed the environmental impacts of a specific road (together with appurtenant utility easements) connecting the Private Land to Highway 160.”

The letter also notes that “The Road is the same road regardless of whether it is located on private land or federal land. It has the same beginning point and the same ending point. It is located in exactly the same place and configuration regardless of ownership of the underlying land.”

In addressing the need for “expeditious consideration,” the letter states, “It has now been 7 months since Judge Matsch issued his opinion. It has been seven years since LMJV’s second request for access to its land either through a Land Exchange or road access across federal land. It has been thirty years since the original land exchange that created the inholding and associated efforts to obtain access began.”

In a Tuesday interview, Dallas noted that, under law, the RGNF has to give LMJV access, with Dallas having limited discretion as to the conditions.

What happens on the property, he noted, lies with Mineral County.

He also noted that the scenic easement is included in the draft ANILCA decision.

That easement was put into place through the 1987 land swap that created LMJV’s private inholding on Wolf Creek Pass

The scenic easement was not, however, applied to the land exchange decision — a fact that is mentioned several times in Matsch’s order halting the exchange.

“The easement’s stated purpose was ‘to provide a specific level of control of the type of development ... to assure that said development is compatible with the Wolf Creek Ski Area,’ but was ‘not intended to conflict with or intrude upon the land use controls of the State of Colorado, Mineral County, or other unit of local government as specified herein,’” Match’s order states.

The order later states multiple times that the USFS failed to apply that scenic easement to the new federal land that LMJV would acquire, with the USFS stating it had no control over development at the site.

“In light of this prior history on the very same property, there is no legal or logical basis for Defendants’ position in the FEIS [Final Environmental Impact Statement] and ROD that the Forest Service had no power or jurisdiction to limit or regulate development on the federal lands being conveyed to LMJV in the present exchange,” the order states, adding later, “The 1987 Scenic Easement demonstrates the Forest Service’s actual power to control development.”

The order further states: “The Forest Service’s express refusal—based on a perceived lack of jurisdiction—even to consider any limitations, restrictions, controls, or other measures designed to ensure compatibility of development

with surrounding National Forest System lands was arbitrary and capricious, an abuse of discretion, and contrary to law. The Forest Service entirely failed to consider an important aspect of the problem, offered explanations for its decision that run counter to the evidence before the agency, failed to base its decision on consideration of all relevant factors, and was wrong as a matter of law.”

Objection period open

The draft record of decision is now available for public review during a formal 45-day objection period.

The objection period will run through Sept. 4.

To learn more about the project, read previous comments or to object, visit <https://www.fs.usda.gov/project/?project=35945>.

In the Tuesday interview, Dallas and Mike Blakeman, public affairs specialist for the RGNF, indicated that, because the ANILCA access was analyzed as part of the 2014 environmental impact study, the people who commented on that study have standing to object to the current draft decision.

However, Blakeman and Dallas noted that public comment is welcome outside of formal objections.

“We are more than happy to take comments and hear what people have to say,” Blakeman said. “We’re always open for comments, always.”

“Every one of them gets read,” Dallas added.

Following the current 45-day objection period, Blakeman explained that the next step is an objection resolution period where the RGNF tries to resolve any objections that are filed, then a final decision is issued.

If an objection is unable to be resolved, the decision is open for appeal, he added.

A controversial decision

Comments concerning any possible access decision began rolling in to Dallas and the RGNF before the draft decision was ever made, Dallas and Blakeman indicated.

Among them, Dallas mentioned receiving notifications regarding a Change.org petition, with that petition started by Rocky Mountain Wild and titled “Dan Dallas: Keep Wolf Creek Wild.”

On the other side of the coin, Dallas confirmed that he received a letter from Wolf Creek Ski Area CEO Davey Pitcher, with that April letter stating the ski area’s preference for the land exchange, but that the ski area is in support of a dedicated entrance to the LMJV property regardless of the outcome of the land exchange.

The day after the draft decision was announced, several conservation organizations — Rocky Mountain Wild, the San Juan Citizens Alliance, San Luis Valley Ecosystem Council and Wilderness Workshop — released a joint statement indicating that the final decision could be challenged.

Travis Stills, attorney with Energy and Conservancy Law, who has represented the groups in several rounds of litigation, is quoted in the statement as saying, “This proposal flagrantly violates federal laws and the developers’ own agreement to subject any access request to federal scrutiny. We are disappointed the Forest Service will not honor the binding settlement agreement and federal court orders. Should the Forest Service cave to pressure, we will take the steps necessary to protect the National Forest.”

The statement from the organizations notes, “A Colorado federal district court set aside the Forest Service’s approval of a land exchange to facilitate the development in May 2017. ‘The Forest Service cannot abdicate its responsibility to protect the forest by making an attempt at an artful dodge,’ the court declared. Now, the Forest Service hopes to use the same artfully dodged analysis, previously deemed in violation of multiple federal laws, to approve a different means of providing the

developers access.”

The developers, however, addressed that issue in a statement released July 19.

That statement notes, “Despite our opponents’ continued misrepresentations that our January, 2018 request for such road access was an attempt to circumvent the recent U.S. District Court’s decision, nothing could be further from the truth. The lower Court set aside the prior Record of Decision granting LMJV’s request for a land exchange. We have appealed that decision and that appeal is ongoing.

“The lower Court’s decision, however, merely set aside what the Forest Service originally selected as its preferred alternative (the land exchange) during the last process. During that same process, the Forest Service also analyzed two other alternatives: a no action alternative, and an alternative to grant LMJV road access across Forest Service land to LMJV’s private land. Our January, 2018 letter to the Forest Service was merely a request that it proceed with granting us the alternative access to our private property regardless of what happens in the appeal on the land exchange.”

Further, the statement addresses the property owners’ right to “adequate access to their property for its reasonable use.”

“The project that LMJV has proposed on its private land and that was subject to prior analysis has been found to be a reasonable use and previous court decisions, to which our opponents were parties, have held that year-round snow-plowed access is required for that use,” the statement reads.

It continues, “While LMJV and the majority of citizens favored the land exchange because of its undisputed benefits including jobs, enhanced recreational opportunities, compatibility with the ski area, and environmental benefits, the appeals court will decide if the land exchange will happen. Whether the land exchange is upheld or not, LMJV is still entitled to obtain year-round access to its private property, which we continue to pursue. We expect the Forest Service will faithfully discharge its legal obligation and grant such access as set forth in its new draft Record of Decision. We also expect that the new decision will be upheld if challenged because it is required as mandated by Congress in the statute.”

The project

According to the Village at Wolf Creek website, there are two different land plans for the proposed development. One reflects the development with the land exchange, while the other considers the development without the land exchange. With the land exchange, the website indicates that full build-out “could have up to 1,711 units, comprised of hotels, condominiums, townhomes, and single family lots, along with commercial amenities located near the Village center.”

The first phase of that proposed version of the project would comprise 497 units, including one hotel, and a pedestrian mall located in the trees.

The website also notes that it would take several years to build and market the units contained in phase one, with future phases then determined by public market demand.

The second project plan contemplates a smaller footprint without the land exchange.

In that version, the project is condensed to fit on the land currently owned by LMJV.

“We designed this new plan to accommodate moving the core pedestrian mall of the Village center into the trees,” the website states.

The website further notes that phasing determinations and densities of each phase have not been determined.

At full build-out, the plan calls for 1,850 units, comprised of hotels, condominiums, townhomes, single-family lots and commercial space.

Sales

Continued from front

On a year-to-date basis, from January to May, revenue was 7.88 percent higher than the same period last year, or \$266,969.

According to the report, “we see the following significant variances” for relative year-to-date (January to May) 2017 to 2018 data.

The following categories were listed as up for 2018, according to the report:

- Retail increased by 13.5 percent, or \$233,081.
- Construction was up by 20.2 percent, or \$12,042.
- Real estate/rental had an increase of 3.1 percent, or \$3,233.
- Accommodation/food service increased by 0.5 percent, or about \$3,037.
- Information increased by 1 percent, by \$1,331.
- The miscellaneous category had

an increase of 3.6 percent, or \$21,468.

- In the “other services” category there was an increase of 2.7 percent, or \$1,430.

The report also listed two categories down for 2018 as compared with last year:

- Manufacturing was down by 5.7 percent, or \$8,081.
- The professional and scientific category was down by 5.2 percent, or \$441.

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