

Tarryall Fishing Club, Inc.

March 10, 2004

Attention all TFC members!

2004 Annual Membership Meeting – Mark your calendar to attend our annual membership meeting at the Jefferson Community Center, Jefferson, Colorado, on **Saturday, May 15, 2004, at 11a.m.**

2003 Fishing Season - The 2003 fishing season saw near normal levels of water in the Tarryall River. The Stagesop Lake (owned by LPROA for its water augmentation plan) was filled to the 9-foot level while LPROA was in priority to pump. The Lost Park Ranch Ponds (owned by SOA for its water augmentation plan) were filled early in the summer by the flow from House Creek and kept filled until they had to be drained by SOA to meet the requirement of replacement water for winter well depletion. Fish were stocked three times in the river and the ponds last season to coincide with Memorial Day, Fourth of July, and Labor Day.

TFC Rules – The 1994 rules for members of the Tarryall Fishing Club, Inc. (TFC) have been updated. A copy of the rules is enclosed with this notice.

Survey of the Tarryall River and Ingress/Egress Points – Pinnacle Land Surveying recently completed a land survey of the Tarryall River. We are now able to proceed with our plan to obtain title insurance for our fishing lease. The surveyor encountered access difficulties when he tried to begin the survey last summer so he had to delay starting until October 2003. The surveyor is also going to mark our ingress/egress points so they can be easily identified.

Red Gate - While the land surveyor was working, a fencing company hired by one of the new landowners removed the red gate and fenced across it. Our attorney sent notice to the landowner requesting the return of our gate. From our survey, it appears that the red gate was located on National Forest land. The surveyor will mark our ingress/egress corridor.

Questions and Answers Regarding Your Fishing Amenity - The December 2003 Stagesop Owners Association (SOA) newsletter, *The Stagesop Gazette*, contained an article titled, "Notice to Stagesop Residents/Owners – Your Input or Your Money" that was published without input from the TFC. There seems to be some confusion regarding our fishing rights so at a subsequent meeting on January 10, 2004, the TFC was asked to provide an update that would help clear up any misconceptions that may have been created by the SOA newsletter. Following is some information that we hope will be of help.

The Stagesop Gazette contained a pre-addressed prepaid postage survey card from the SOA Board for their use in trying to determine "how important your fishing rights are to you."

The TFC would like you to know, as purchasers of a tract in either Stagesop or Lost Park Ranch, we are all subject to the Declaration of Protective Covenants which include the following language: "Purchasers of tracts understand that membership in and full support of (the association) and the Club are an absolute requisite for every purchaser and owner THE VALUE OF THE LAND IS CLOSELY TIED TO THE FISHING AMENITY, AND TRACT PURCHASERS UNDERSTAND THAT PAYMENT OF DUES. . . .AND FULL COOPERATION WITH (ASSOCIATION) DECISIONS AND POLICIES IS A REQUIREMENT CONCOMITANT WITH TRACT PURCHASE AND OWNERSHIP" (Emphasis in original.) The declarations also empower the owners' associations to exercise "surveillance over adjacent development in order to maintain property owners' rights and uphold values."

People bought into the two subdivisions subject to this covenant. Many bought specifically because of the fishing amenity. The fact that some of the owners have not paid their assessments is not relevant to an analysis of the legal status of the fishing club or of the duties of the directors and officers of the Homeowners' Associations. People in these kinds of communities have to pay association assessments whether or not they agree with the decision and whether or not they use the amenity.

The Stagesop Gazette stated: "Years ago when Stagesop was being developed, a handshake was all that was required to define fishing rights of the property owners. It was never disputed that we had those rights."

The TFC would like you to know this is not an accurate statement. We have a lease for the fishing rights along the Tarryall River that has been legally recorded in Park County. There have been some disputes over the years regarding our fishing rights and our access points. Access to the river was allowed in the past, for relatively short periods of time, at locations where we did not have a legal easement for ingress/egress. In May 2003, we invited our attorney, Amy Durfee West, to speak at our annual membership meeting where she discussed her assessment of our fishing lease.

- On June 11, 1976, the developers of Stagesop and Lost Park Ranch, William W. Poleson and Kenneth H. Barber, signed a lease with Harper Sibley, Jr., in which Sibley conveyed the fishing rights to the property he owned to Poleson and Barber for 99 years with an option to renew for another 99 years.

- On June 18, 1976, the lease was recorded in Park County, Book 253, Page 267, Reception No. 222416.
 - The lease defines the property and grants 20 feet from each bank on either side the creek as it flows through the property that can be used for fishing.
 - The lease states that the “intended use of the premises is the use and enjoyment of the fishing rights . . . , which may be granted or assigned in whole or in part.”
 - The lease further states that Sibley agreed that the purchase of other real property from him by Poleson and Barber would “constitute consideration for the rental for the entire term of this lease and renewal option, ...”
- On February 19, 1992, Sibley, Poleson, and Barber signed a Clarification of Lease.
- The Clarification of Lease was recorded in Park County on March 9, 1992 at Book 473, Page 773, Reception No. 401290.
 - The lease clarification included Attachment 1 that had been referenced in the 1976 lease but was omitted when the lease was recorded.
 - It defined two points of ingress/egress - one along the State land and another at the stream gage.
- In 1991, Articles of Incorporation were drafted and recorded for the Tarryall Fishing Club, Inc., in anticipation of the operation of the fishing club being turned over to the Homeowners’ Associations (HOAs).
- In 1992, a class action lawsuit was filed on behalf of Stagestop and Lost Park Ranch owners.
 - When many people originally bought property from the company owned by Poleson and Barber, The Rawhide Company, they were told that they had access to the stream in locations where there was no legally recorded access. At that time, Poleson and Barber owned property at the location where the Observatory Rock Bison Ranch river home is currently located. They allowed access to the river over that property but when they sold the property to Norm Crouch, they neglected to reserve an easement for ingress/egress across the property. TFC members continued to access the river at the river home for several years.
 - In 1991, Norm Crouch made an agreement with Poleson and Barber to protect privacy at the river home. The agreement, called *Easement for Access to Tarryall Creek*, prohibited all fishing for a distance of approximately 750 feet along the river where it ran in front of the river home. In exchange for giving up fishing rights, the TFC was given parking and a fenced walkway from County Road 77 to the river on either end of the area where fishing was prohibited. The majority of the members in the HOAs were not in favor of this agreement.
 - Associated issues related to the developers turning over the control of the TFC to the HOAs, the use of the fishing club dues by the developers to pay attorney fees for making the agreement with Norm Crouch, and the use of fishing club dues to pay for fencing the walkways to the river were also addressed in the lawsuit.
- The lawsuit was eventually settled out of court (by a settlement agreement). As a result, the following agreements were made:
 - Poleson and Barber and the Crouches signed a new agreement called *Rescission of Easement for Access to Tarryall Creek*. This agreement rescinded the agreement that prohibited fishing in the area in front of the river home and rescinded the two points for ingress/egress, one on either end of the 750-foot no fishing zone.
 - Stagestop Owners’ Association and Lost Park Ranch Owners’ Association signed a *Lease Limitation Agreement* with the Crouches which limited the fishing easement to 10 feet (rather than 20 feet) along either side of the river for 750 feet where it runs past the river home.
 - Poleson purchased an easement from the City of Thornton, which he immediately assigned to the HOAs. This easement was for TFC’s use as an ingress/egress and became commonly known as the red gate access point.
 - Poleson and Barber assigned the fishing rights to the Stagestop and Lost Park Ranch HOAs.
 - The management of the fishing club was turned over to the HOAs.

The Stagestop Gazette stated: “Without clear title to the property, the fishing club has no legal leg to stand on. So we had a survey done and have attempted to acquire Title Insurance to protect our future rights.”

The TFC would like you to know, we do have a “legal leg to stand on.” In the preceding section, we have described some of our legally recorded documents. Many of our documents do not go into much detail so, at the advice of our attorney, a real estate specialist; we have begun the process to obtain title insurance. The title company has begun reviewing the recorded documents that should show our claim to the fishing rights conveyed by our lease is valid. The title company is reluctant to issue title insurance without a land survey that shows the location of the Tarryall River on the land. As the title company continues its work, they will let us know what other actions will be required for us to get title insurance. One possibility is that we may have to file a court action if there is no legally recorded documentation for our claim to fish on a particular section of property or we need to clarify our rights to access and fish the Tarryall River.

The Stagestop Gazette stated: “As it stands now we have about 15 miles of the Tarryall plus the ponds located in Lost Park and Stagestop for fishing. There is approximately 4 miles of Tarryall that is in dispute.”

The TFC would like you to know that based on the recently completed survey, we believe we have about 10 miles of river. We are not sure which 4 miles of river the author of *The Stagestop Gazette* believes are in “dispute.” At this time, none of the landowners along the river has disputed our right to fish. However, some of our ingress/egress points and areas where we used to park while fishing have been questioned or obstructed and the extent of the fishing rights of the new property owners has also been questioned. A brief history follows.

- In May 2001, a previous landowner, Dr. Larry Melia, the owner of the property between the JV Ranch (just south of the pond located near Stagesop) put up a fence to block our access to the “old gravel pit” parking area, posted no parking signs all along the road, and hired a guard to discourage anyone from parking along the road near the red gate access point. Dr. Melia was selling his property through Breckenridge Realty and was advertising that the fishing club had no point of access anywhere near his river home, that only 2 people were allowed on the river at any given time, and that only flies and lures/catch and release fishing was allowed.
- At the 2001 TFC annual membership meeting, members were encouraged to write letters to Dr. Melia, Breckenridge Realty, and real estate agent, Art Girton, to express our concern. TFC and the HOAs authorized TFC President, Paul Grossnickle, to pursue whatever legal action was necessary to get our access straightened out.
- Dr. Melia sold his land in three parcels – the parcel closest to Stagesop (just south of the JV Ranch) to Kelvin Rowlette, the next parcel to Topaz Mountain Ranch, and the third to American Abatement. Paul Grossnickle, TFC President, tried to contact each of the new owners before they bought the property to make sure they understood the fishing lease. Mr. Rowlette was the only one of the new owners who agreed to talk with Paul. The other two owners were listed as entities and Breckenridge Realty was unwilling to give out their names or pass along any information regarding the fishing club.
- At the TFC annual membership meeting in May 2002, TFC reported it was in the process of negotiating with Mr. Rowlette for a parking area to replace the “old gravel pit” parking area. With each revision, the agreement Mr. Rowlette’s attorney was drafting became less and less favorable to the TFC. The attorney we were using in Fairplay was unsure of what to do so the TFC decided to take all of its legal documents to an attorney with real estate experience for an impartial evaluation.
- After receiving an initial evaluation from Amy Durfee West, the TFC, Inc. hired Ms. Durfee West to work with us. We have enlisted the HOAs from Stagesop and Lost Park Ranch to fund the legal actions recommended by our attorney. (That is why each HOA asked its property owners to pay a special assessment.)
- In October 2003, while our surveyor was working, one of the property owners took out the red gate and replaced it with fencing. We have asked our attorney to contact their attorney to get the gate back. From the initial look at the survey, and also from maps we obtained from the Federal Highways Association, we believe that the red gate was located on Forest Service property. We have initiated discussions with representatives from the Forest Service to try to determine what recourse we may have, particularly remedies that may be relatively inexpensive. In the interim, it is still possible to access the river at the red gate location by going through a post and slip wire gate that is located on National Forest land approximately 100 yards north of the new road built by Topaz Mountain Ranch.