

Legal-Ease 101: What is Intervention in court (and why)?

By Del Albright and Brian Hawthorne

You may have heard about one of our off-road groups “intervening” in a court action. This is not the same as filing a lawsuit. Herein we will explain what it means to be an “intervenor” in a court action, and why it is an essential part of our access efforts.

Legal actions can be described as offensive and defensive. To intervene is a defensive maneuver that can save the day for us, by ensuring we have a seat at the table when recreational decisions are made.

The core of the defensive maneuver is the “defendant Intervenor” play. Off-roader organizations intervene in lawsuits filed by the anti-access crowd as a defendant. Sometimes, we can mix the offensive and defensive play as well. This is an excellent way of making sure no federal judge makes a decision (about our trails and our sports) without hearing from the people who use them.

An Intervenor allows the OHV community to directly oppose the arguments made by the radical anti's. Specifically, to intervene (become an Intervenor) a person or group that was not part of an original lawsuit, must show that they will be directly harmed by the court's decision. Often, groups like BRC act as representatives of people who have a direct concern in the legal issues.

Interveners (like BlueRibbon Coalition, the California Association of 4Wheel Drive Clubs, (and others) become a player in the outcome of a lawsuit they were not originally part of. They often request intervention because the agencies defending the lawsuit may not fully represent off-road interests, or worse.

Being an Intervenor is a GOOD thing. Intervention is far more cost effective than offensive litigation and gets our issues, facts and opinions in front of the judge who would otherwise only hear from the feds and the anti-access group suing them. Obviously, the only option is for off-road groups to intervene on behalf of the federal government most of the time. We seldom find ourselves intervening on behalf of those who wish to shut us out of public lands.

Note: the entire process to get to this point means the intervenor was involved in Scoping as well as reviews of documents like an Environmental Impact Statement (EIS). This gives the group “standing” in order to prove “harm” could be done if we don't have a seat at the table, with a chance at a favorable decision.

Sometime folks question whether it would be stronger show of force to file a "real" lawsuit as a plaintiff instead of "only" an intervention. Fighting for OHV access is fighting for OHV access, no matter whether we carefully choose the fight on offense or are defending against a bully who

attacks in our home. BRC does both, but public land access issues involve a complex web of law, policy and intangibles. Picking the “fight” is a choice best made with caution and wisdom. When the bully brings the fight to us we believe doing nothing is not an option.

So when you hear about BRC or the California Association of 4Wheel Drive Clubs (CA4WDC) or some other off-road group intervening on your (off-road) behalf, please thank them! A donation to their legal fund would be even better!

SIDEBAR:

Extra note from Brian Hawthorne: For a variety of reasons, defensive legal actions can reap the most profound results for the OHV community. I site the example of a 9-0 Supreme Court decision on a lawsuit that originated in Utah. To make that very long story as short as possible, BRC and other OHV orgs ran a defensive maneuver in a lawsuit designed to close millions of acres of Bureau of Land Management land in Utah. In the end, it was the legal argument by BRC's legal eagle, Paul Turcke that thwarted the radical anti-access plans. (More specifics on that case here: <http://www.sharetrails.org/alerts/2004/06/15/supreme-court-victory-ohvers>).

And for a listing of BRC's focused and effective Legal Action Program, be sure to visit this link for an overview: <http://www.sharetrails.org/legal>.

STAY TUNED for the next Legal-Ease 101 where we'll talk about offensive maneuvers in the access courtroom.

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