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Road wars: County sues feds over desert preserve

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The Mojave Desert has been the battleground in a long-running range war between conservationists and those who argue the public has been shut out of their own public lands.

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The signature epic battle ended Oct. 31, 1994, when Congress narrowly passed the California Desert Protection Act.

The controversial law upgraded Death Valley and Joshua Tree national monuments to national parks and created a new national park unit, the Mojave National Preserve, covering 1.6 million acres, or most of the land between interstates 15 and 40 east of Barstow to the state line.

San Bernardino County has launched a new skirmish in the old fight, using an 1866 law to claim it owns most of the roads within Mojave National Preserve.

The county in October sued the U.S. Department of the Interior, seeking title to 14 roads within the preserve.

"It's to have a piece of paper (to prove) that the county has a right to use these roads," said Brad Mitzelfelt, who was just appointed the county supervisor representing the 1st District, which covers most of the county's sprawling desert.

"The county would like to have a guarantee that the network of roads across the preserve, that none could be arbitrarily closed or excessively restricted," he said.

In its response filed Tuesday, the federal government denies the county's claims and asks the court to dismiss the suit.

The suit relies on Revised Statute 2477, a component of the Mining Law of 1866 that permitted construction of roads across public lands to help spur settlement of the West.

It was repealed in 1976, but existing rights-of-way were grandfathered in.

It's also the law being used by a group of off-roaders who bought land in Panamint City, an abandoned mining town in Death Valley National Park.

That group is seeking to reopen Surprise Canyon to off-road vehicles to gain access to the ghost town.

Critics say the county suing the federal government to gain control of the roads is unnecessary and expensive.

But they also see a more sinister intent - that San Bernardino County is using the process to pry open lands that have been closed to traditional uses such as mining, grazing and off-roading.

"Utah and some counties have viewed R.S. 2477 not as a shield to protect public access, but as a sword to defeat protection of land and water," said Ted Zukoski, an attorney with Earthjustice.

The county a few years ago identified thousands of miles of trails and roads that could fall under R.S. 2477, said Jason Fried of the California Wilderness Coalition.

"What happens if they get these and decide they want to do another 14 roads?" he asked.

While environmentalists have fretted that counties have listed narrow foot trails and even stream beds as "roads," San Bernardino County is laying claim to well-established routes.

Among them are Halloran Springs Road, Cima Road, Kelbaker Road and Goffs Road.

The lawsuit alleges the county has had trouble maintaining the roads because of interference from the National Park Service.

In its response to the suit, the Department of Interior agrees that the Park Service has placed some restrictions on where the county can excavate fill material. The government also admits the Park Service has complained that county maintenance has been inadequate.

There is an effort under way to draft a formal agreement between the county and the Park Service on road maintenance in the preserve, although day-to-day operations have not been a major problem, officials said.

"Our operations staff has a good working relationship with the park staff," said Annesley Ignatius, assistant director for operations in the county's public works department.

Preserve Superintendent Dennis Schramm said there have been disagreements with the county over excavating fill material but was optimistic an agreement will be worked out.

"The county maintains the roads, and we'd like them to continue," he said.

Both sides agree that cooperation is better than litigation.

"There has never been an easy debate over a road," said Kristen Brengel of The Wilderness Society in Washington, D.C. "Is it that critical to gain control over the roads? These roads aren't going anywhere. Why is the county spending this money when there's no chance the National Park Service will shut them down?"

County attorneys working on the case said the suit hasn't been that expensive, and the county is obligated to protect its rights.

"The preferred way is sitting down with the other agency and working it out. That hasn't happened," Deputy County Counsel Charles Scolastico said.

Mitzelfelt said concerns that the county will try to plow through wilderness areas are mistaken.

"Really it's more an effort to preserve what we have, and to preserve the beneficial uses of land for which access by vehicle is essential," he said.

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