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Rural road war heats up again

State gearing up to sue the feds over contested wilderness routes; Road wars erupt anew

Brent Israelsen The Salt Lake Tribune

The detente in the war with the federal government over road rights of way on public lands in **Utah** is over. Last week, the **Utah Attorney General's** Office "augmented" the state's earlier threat to sue the U.S. Department of Interior over thousands of contested routes across federal public lands, most of them in southern **Utah**.

It was unclear Wednesday whether the apparent renewed threat to sue had the blessing of **Utah** Gov. Olene Walker, who has stated recently that her office was pursuing a non-litigation strategy for resolving the road disputes.

At the heart of the issue is the ongoing debate over how much land in **Utah** qualifies for federally protected wilderness, which by definition must be free of roads.

Walker's predecessor, Mike Leavitt, tried to avoid protracted litigation with the federal government by negotiating a "**memorandum of understanding**" (MOU) last year with Interior Secretary Gale Norton.

The MOU established a process by which the state could obtain ownership of a route across federal land if the state could prove the road qualified under a 19th century mining law known as RS2477.

Leavitt touted the MOU process as a fair way to resolve a "notice of intention to sue" that his office filed against Interior in 2000.

But last week, Assistant **Attorney General** Ralph Finlayson stated in a legal document that **Utah** and its counties "have no present intention" to make any claims under that MOU.

He explained that recent legal opinions -- one from the **General** Accounting Office and one from Interior's Board of Land Appeals -- have cast a shadow over the validity and workability of the MOU.

"The possibility of any such claims [under the MOU] in the future is speculative at best," Finlayson wrote in a brief filed as part of an open-records case the Southern **Utah** Wilderness Alliance (SUWA) has brought before the **Utah** State Records Committee.

SUWA is seeking documents relating to state and county ownership claims to 20 roads that the state had planned to pursue under the MOU. But Finlayson has refused to release the documents, citing **attorney-**

client privilege. A hearing on the matter is scheduled today.

Finlayson said the documents SUWA is after could become evidence in a lawsuit the state threatened against Interior in June 2000.

That threat, Finlayson stated, "remains in effect and has been augmented by a Supplemental Notice of Intent to Sue dated May 12, 2004."

SUWA is concerned many of the counties' road claims are spurious and could thwart Congress' ability to protect millions of acres of public lands as wilderness.

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