

PUBLIC LANDS: Utah county, Forest Service try to reach agreement on forest roads

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Eryn Gable, special to *Land Letter*

A rural county in northern Utah has claimed ownership of nearly every mile of road in the Wasatch-Cache National Forest, saying it can do a better job of maintaining and managing the roads than the federal government.

In recent months, the Cache County Council has passed resolutions claiming ownership of nearly 200 miles of roads in the forest, and council members have their sights on another 150 miles.

"Nobody's ever challenged the Forest Service's right to these roads until now," said council member Cory Yeates, adding that the county has records dating back to the 1890s demonstrating the county's ownership of the roads.

"We have done it because they're county roads that existed prior to 1904," when the Forest Service was established, Yeates said.

Forest Service officials, however, say the county cannot take ownership of that roads so easily. Such cases usually have to be handled by a court of law to determine whether the county has legitimate claims to the roads.

"The Forest Service doesn't have the authority to grant roads to the county," said Forest Service spokesman Martin Jensen.

Counties may claim ownership of national forest roads under the 1866 mining law **R.S. 2477** if they can show historical use and maintenance of the roads prior to the land coming under federal protection. The law allows states to claim rights-of-way that existed before land was designated as federal property.

Exactly what constitutes an existing right-of-way has been the subject of some confusion, however. The 10th U.S. Circuit Court of Appeals in 2005 endorsed a more liberal definition of roads that may qualify for states and counties to claim rights-of-way, ruling Utah's criteria of 10-year continuous use should apply ([Land Letter](#), Sept. 15, 2005).

Yeates said the county has the documentation to back up its claims, but it won't take the Forest Service to court to prove its claims unless it is forced to. "We're not afraid to go into court and let a judge adjudicate," he said.

But the Salt Lake City-based environmental group Save Our Canyons doubts the county's records will hold up in court, saying the county's evidence of ownership appears to be based on

the establishment of the county in 1857, before the creation of national forest. The county has not responded to public information requests asking for proof of the county's ownership, said Carl Fisher, issues coordinator for Save Our Canyons.

"We've never seen any of that data," Fisher said.

Fisher said his group worries that county ownership of the roads could jeopardize the "best management practices" of the Forest Service and open more roads to motorized vehicles. "The county has motives from our perspective to increase motorized use on these roads, and that's the reason they've been seeking ownership and control," he said.

But Yeates said the main motivations behind the county's claims are to take back what rightfully belongs to the county and to better maintain the roads, noting that the county's ownership of the roads would give officials access to \$120,000 to \$210,000 annually from the state's Class B road fund.

Yeates admits that county officials are not happy with some of the road closures, but he said the county has not pushed the issue on the closed roads. "Just because the county takes ownership doesn't mean we're going to rip out the gates and let everybody go ... up the roads," he said.

"The county knows more what the citizens want than the Forest Service does," added local resident Garth Barker. "I think the outcome down the road will be a well-managed forest" if the county takes over the roads.

Despite the confusion over who owns the roads, county and Forest Service officials are working on an agreement that would allow the county to help maintain the roads. The agreement does not discuss any ownership issues, but it would set standards for the roads, including maintenance and access.

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