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Bogus road claims are subject to the safeguards of the legal system

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The June 24 opinion piece "BLM determinations of RS 2477 roads are valid, necessary" by Kane County Commissioner Mark Habbeshaw is an example of the old adage that "a little knowledge can be a dangerous thing." Habbeshaw is right that the 10th U.S. Circuit Court of Appeals issued a decision two years ago about rights of way across federal public lands. But that's about all he got right.

In particular, he was dead wrong in saying that the court requires the Bureau of Land Management to informally decide the validity of certain "highway" right-of-way claims across public lands like our magnificent, pristine wilderness areas, proposed wilderness, wildlife refuges and national monuments.

"Mumbo-jumbo," you might say. But this is a hot topic now because Congress is about to pass its annual funding bill for the Department of Interior and it has signaled in no uncertain terms that it will impose significant safeguards to ensure that bogus road claims do not threaten the very wide open, scenic places Americans hold dear. It's a welcome change.

Congressional oversight will limit the potential for abuse of a lax, new Interior Department policy under which the Bureau of Land Management could make informal decisions about the validity of cow paths and jeep tracks the counties like to call "highways."

Counties that claim that trails and stream beds like the Paria River are actually "highways" support this slippery process because they fear their claims would never stand up in court, where retention of public ownership is favored. They're like the neighborhood blowhard who parks his car on your lawn claiming that he actually owns the land. He doesn't want to go to court to prove his claim; he just wants to bully you into submission.

Why is this important? Because if some counties, like Kane County, successfully use this old tactic to claim that faint trails and stream beds are actually "highways," neighboring public lands, no matter how spectacular or fragile, cannot be protected as wilderness or managed to rein in out-of-control ATV and dirt bike use.

Exhibit A: Kane County officials have taken the law into their own hands by ripping out BLM signs in

the Grand Staircase Escalante National Monument indicating where fragile areas were closed to ATV use and putting up their own signs inviting those very same vehicles to enter the closed areas.

Fortunately, the 10th Circuit's opinion doesn't give any support to this approach and specifically frowned on a "bulldoze now, talk later" approach.

Two other things: According to Mr. Habbeshaw, the court ruled that the "BLM has a duty to conduct determinations as to the validity and scope of such claims for administrative purposes." Actually, in one sentence of the 52-page opinion, the court noted that the BLM is not forbidden from making its own informal decisions and that these "are useful only for limited purposes, namely for the agency's internal 'land use planning purposes.'" Hardly a mandate.

Habbshaw stepped in it again when he wrote that "the court ruled that counties have no legal obligation to consult with BLM regarding the 'existing state' of RS 2477 roads." True, but only *if*, according to the court, the county has a valid right of way. The court did *not* say that the county alone gets to decide where and whether it has a valid right of way at stake, as Kane County claims. Only a court of law can make that decision.

Given the documented abuses of RS 2477, and the potential loss of the natural quiet and beauty of our national parks, wilderness areas, wildlife refuges and monuments, congressional and legal safeguards are crucial.

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