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Warning: Bumps ahead in dispute over rural roads

Appeals court ruling: One of the environmentalists calls the decision a "full employment act for lawyers"

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The 10th Circuit Court of Appeals this week loosened the standards for what Utah and its counties can claim as their roads in the state's outback. But even with that clarification, don't expect the ongoing disputes over road ownership in the Beehive State to end anytime soon.

Utah and county officials hailed Thursday's decision overturning a lower court ruling as an endorsement of what they believed all along - that state law, not Bureau of Land Management policy, determines what can be claimed by local governments as a backcountry road.

"We think this is a big step forward in fixing what the rules are. All the parties now have a better sense of what the signposts are," Utah Assistant Attorney General Ralph Finlayson said Friday. "The BLM will be better situated in making its policies, and the courts will have the benefit of more explicit law to follow in the application of these issues. And with the rules better fixed, we think the possibility of congressional action or negotiated settlements are enhanced."

But environmental groups that have opposed Utah's road claims say the ruling has raised as many questions as it answers. They don't anticipate it will end what has mushroomed into a series of lawsuits filed by the state and counties challenging the BLM's management of those roads.

"It's a mixed bag. There's still a lot of confusion, and there's still a heckuva lot of work," said Heidi McIntosh, conservation director for the Southern Utah Wilderness Alliance. "If you want a full employment act for lawyers, this decision is it."

The state and counties have five lawsuits pending against the Interior Department, and have filed six more road claims under a memorandum of understanding between Utah and Interior that was signed in 2003. Utah is making its claims under Revised Statute 2477, an 1866 mining law that granted rights of way over federal land. The statute was repealed in 1976, but existing claims were grandfathered in.

The Sierra Club and SUWA filed suit against the BLM in 1996 for failing to prevent San Juan, Kane and Garfield counties from grading routes across the Grand Staircase-Escalante National Monument and areas that environmentalists had targeted for wilderness designation. The counties claimed they weren't making new roads, only maintaining existing rights of way.

U.S. District Court Judge Tena Campbell ruled that the county's road claims did not meet the BLM's criteria requiring proof that the roads led to specific destinations and that they showed evidence of purposeful, mechanical construction. But the 10th Circuit this week rejected the construction requirement, ruling that local governments must prove only that a road has been in continuous use for 10 years.

"It's particularly supportive of the validity of our claims," said Kane County Commissioner Mark Habbeshaw. "Ten years establishes a right of way. Period."

BLM officials said Friday they were still reviewing the ruling and would have no comment until it was complete.

"There are a number of things happening in this decision. That's as far as we can go with it right now," said agency spokesman John Wright.

Assistant attorney general Finlayson believes the key component of the 10th Circuit ruling was that it expands the definition of a road to include old mining and jeep trails, which the counties consider part of their transportation network.

"We're not talking about a freeway," he said. "The interpretation of what a highway is, is quite minimal. It can even include trails, though we're not seeking to establish trails as a right of way. We argued these roads are used by vehicles."

But SUWA's McIntosh believes the appeals court also laid down a firm marker requiring local governments to show what she calls "prolonged use" to have a valid road claim.

"Just because an off-road vehicle goes down into a wash bottom, that doesn't make it a highway," she said. "All of these two-tracks and dirt trails that have not received substantial use and have dried up and blown away do not deserve RS 2477 status."

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The dispute:

* The state says the court ruling broadens the definition of a road to include old jeep trails through public lands.

* Environmentalists argue that in requiring counties and the state to prove 10 years of continual use, they will have a tough time establishing road claims.

At stake:

* Whether hundreds of thousands of acres of public lands surrounding disputed roads still qualify as wilderness.