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## Wilderness in limbo as 'roads' are redefined

State of Utah, rural counties call court ruling a big victory

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Salt Lake Tribune

It was settled for a time, when a road is a road in backcountry Utah.

No longer.

The 10th Circuit Court of Appeals decided Thursday a lower court had the definition all wrong. Now U.S. District Court Judge Tena Campbell must apply a new definition, one set by the appeals court and lauded as a victory by three Utah counties and the state of Utah.

Still, neither side would predict whether the 120-page decision will eventually result in more or less designated wilderness. But everyone agrees it could have an enormous influence in settling which of roughly 10,000 rural Utah tracks are indeed "roads," and ultimately, whether the land around them still qualifies as wilderness.

Utah Assistant Attorney General Ralph Finlayson called the appeals ruling "a wonderful victory" for the state and Kane, Garfield and San Juan counties.

"It makes a huge difference in many ways," said Finlayson, who had argued against Campbell's adopted definition of roads.

In two past decisions on the case, Campbell had relied on standards set out by the U.S. Bureau of Land Management (BLM). The Southern Utah Wilderness Alliance [SUWA] originally filed suit in 1996, after road crews from the three counties began grading dirt trails and stream beds on federal lands and calling them county-controlled roads under RS2477, a Civil War-era law that gave counties rights of way over federal lands.

"The previous decisions provided clear guidelines, and this decision is really confusing," said Scott Groene, executive director of the conservation group. "The result of this [ruling] will be enormous amounts of litigation to flesh out this decision."

The appeals court Thursday directed Campbell to scrap the definition that had guided her earlier rulings, based on criteria established by the BLM. For instance, the agency said a road was only a road when there had been "mechanical construction," such as grading.

But, the three-person appeals court, which includes former University of Utah law school professor Michael McConnell, said Congress never gave the BLM authority to decide the issue. And, siding with the state and the counties, the judges agreed with Utah law's guideline that roads are roads if they have seen "continuous use" for 10 years.

The BLM had no comment. Its attorneys had not seen the case.

Groene said SUWA would consider its options for fighting the ruling within the court's 45-day deadline. He predicted the ruling would create a "management nightmare" for federal land agencies, which oversee lands through which the disputed roads go in such places as the Grand Staircase National Monument and near Canyonlands National Park.

Under the Wilderness Act, land must include at least 5,000 acres and be road-free to be eligible for protection. By grading dirt tracks, counties effectively render wildlands ineligible for wilderness designation under the law and leave the lands open to motorized travel.

Finlayson denied the ruling was about wilderness and insisted it was about the control counties have over their backcountry routes.

"I'm after roads," he said. "I'm not after wilderness."

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