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Roads and Wilderness: Counties shouldn't assert dubious claims to prevent wilderness

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Last week, a federal appeals court changed the rules of the road for determining whether county claims to old rights of way across federal land are valid. Utah's counties, backed by the state, won a limited victory in their long battle with the Southern Utah Wilderness Alliance and the Sierra Club over disputed county roads on federal lands.

If this victory helps the counties to establish clear title to roads that no reasonable person would dispute, that would be good. If, however, it emboldens counties to assert dubious claims to little-used dirt tracks as a pretext to remove from potential wilderness designation lands that otherwise would qualify, that would be bad.

Only lands that comprise at least 5,000 contiguous acres and are roadless qualify as potential federal wilderness.

Of course, how one answers these questions, in the case of a particular road, is the heart of the argument. What everyone agrees on is that there is much at stake, including economic development in rural Utah, how federal lands are used by different groups of people (ATV riders or hikers, for example) and whether certain lands will remain open to mining, drilling, ranching and logging, or will be set aside for wilderness protection.

The roots of this road war go back to 1866, when Congress passed an open-ended grant of "right-of-way for the construction of public highways over public lands not reserved for public uses." This law, commonly called R.S. 2477, promoted the development of unreserved public lands and their passage into private ownership.

In 1976, however, Congress abandoned this approach, deciding, instead, to retain the public lands and to put greater emphasis on conservation and preservation. It repealed R.S. 2477, but grandfathered previous claims. Trouble is, there was never any requirement under the old law that these claims be documented.

Today's court fight is over what constitutes a valid claim.

In its ruling, the appeals court held that only the courts, not the Bureau of Land Management, can decide whether county claims are valid, and that they should use a standard borrowed from state law: 10 years of continuous use. Because the appeals court threw out a lower-court ruling based on a BLM standard that said counties had to prove they had constructed the roads, this favors the counties.

The case, which started in 1996, now goes back to district court for trial.