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editorial

Norton's late road order is out of line

Interior chief used a loophole to direct federal agencies to enter into pacts with counties regarding road maintenance and liability. It's a bad idea.

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Spider webs of dirt tracks crisscross public lands in the West, damaging streams, wildlife habitat, desert ecosystems and archaeological sites. As one of her last acts as U.S. Interior secretary, Gale Norton this week announced a policy that will worsen the situation.

In 1866, Congress passed Revised Statute 2477 allowing highways to be constructed across federal lands. Congress repealed the law in 1976 but failed to say what should be done about roads claimed by county governments across federal lands. The long-standing feud intensified in the 1990s when counties (particularly in Utah and northwest Colorado) started claiming one-lane dirt tracks, even cow paths, as "highways" across public lands to stop designation of wilderness areas, national monuments and wildlife refuges. Former Interior chief Bruce Babbitt tried to fix the problem a decade ago but the Republican-led Congress barred the Interior Department from implementing any rules regarding RS 2477.

The ban is still in effect, but Norton tap danced around it. Without any public hearings, she issued an order she said was based on a federal appeals court decision. However, her order actually runs counter to the thrust of the court's opinion.

Last year, the Denver-based 10th U.S. Circuit Court of Appeals said in a Utah case that counties have a property right to the roads, but also have the burden of proving that the claims are legitimate. The court lamented that Congress has given no guidance about how to assess the claims. Finally, the court noted that the congressional prohibition on new rules is still in place but said Interior could make non-binding recommendations.

Norton used that loophole to direct agencies like the Bureau of Land Management to enter pacts with counties regarding road maintenance and liability. In other words, the recommendations will become de facto federal recognition of county claims, violating the congressional ban and ignoring the court's directive that the counties must prove their claims.

Congress could resolve the problem. Existing law requires anyone with a federal mining claim to do a certain amount of work for the claim to stay valid. Similarly, Congress should tell counties that if they want to claim RS 2477 rights, they must build and maintain highways to modern standards - in other words, the purported road can't be a cow path but must be built and kept up like a state roadway. That provision would end the abuses now rampant on our public lands yet let counties claim roads legitimately needed to link communities or sustain economic activity.