



## NATIONAL MONUMENTS: Utah county rights-of-way claims struck down

Colleen Luccioli, *Land Letter* Editor

A Utah county violated constitutional clauses by erecting road signs and allowing off-highway vehicles in Grand Staircase-Escalante National Monument and nearby areas, a U.S. District Court judge ruled last week.

But Kane County promises to appeal the ruling, which is just the latest chapter in a protracted and fiercely fought battle between federal land management agencies and states and counties attempting to assert their claims to land management rights within their borders. The battle between these competing interests has been described as “trench warfare.”

Meanwhile, the ruling is being heralded by conservation groups that claim the decision reaffirms the supremacy of federal decision-making over state and county ordinances.

“The Center for Biological Diversity applauds this ruling and the positive precedent it establishes,” said Rob Mrowka, conservation advocate for the group. “It sets the stage to end abuses of our heritage lands and provides the federal land-management agencies with



The Grand Staircase/Escalante National Monument is one front in a continuing battle over access to public lands on old roads and little used trails. Litigation over the matter continues. Map courtesy of the Bureau of Land Management.

a firm basis for formulating wise stewardship decisions.”

“The decision sends a strong signal to states and counties that they can’t literally run roughshod over national parks and national monuments with dirt-bikes, ATVs and other off-road vehicles,” agreed Ted Zukoski with Earthjustice.

At issue is efforts by Kane County, located in southern Utah, to exercise authority over management of roads

located within the county but being managed by the Bureau of Land Management and the National Park Service. The county claimed that it had “valid existing rights,” or rights of way, under R.S. 2477, a 19th-century federal statute.

BLM manages about 1.6 million acres in the county and NPS manages about 400,000 acres of the county’s land. Of concern in the lawsuit are four areas: the Grand Staircase-Escalante National Monument,



designated by former President Clinton in 1996; the Paria Canyon-Vermillion Cliffs Wilderness; the Moquith Mountain Wilderness Study Area; and portions of Glen Canyon Recreation Area that lie within Kane County.

BLM, and to a lesser extent the National Park Service, has levied a series of restrictions on the land in those four areas to protect habitat, streams and soils, among other reasons. Perhaps the most contentious aspect to the restrictions was a near complete ban on the use of off-highway vehicles on the areas.

But the county subsequently defied the restrictions by removing federal road postings and allowing OHV use, claiming rights under R.S. 2477.

But the ruling by U.S. District Court Judge Tena Campbell reads, "The court disagrees that the County currently has valid existing rights under R.S. 2477 for the areas in question, because the County has yet to establish the validity of those rights in a court of law."

"Consequently, the County's actions, unsupported by any valid existing right under R.S. 2477, are pre-empted by the Supremacy Clause because they create an obstacle to the accomplishment and execution of Congress' land management objectives, as carried out by BLM and NPS," the ruling continues. The ruling also ordered the county to remove any signs or postings that it had erected along the roads within 20 days.

The ruling essentially reiterates a similar decision handed down by U.S. District Court Judge Bruce Jenkins last June (Land Letter, July 12, 2007). The case in question involved Utah's Kane and Garfield counties, which were asserting their claims to rights of way on BLM-managed land. The judge averred that the counties must resolve their R.S. 2477 claims in court first, before taking on the off-roading issue. The burden is on the counties to prove their R.S. 2477 claims, not BLM, Jenkins said.

Brian Hawthorne, with the BlueRibbon Coalition, said his

group, which aims to protect recreational access to public lands including OHV use, is disappointed with the ruling. He said, "We think the county should decide how these roads should be managed. These roads are supposed to be county roads." He added, "Congress needs to do something to reaffirm these rights of way and make sure the county manages their roads."

Shawn Welch, an attorney representing Kane County, indicated the county is not ready to give up the fight. "We do intend to appeal," he said.