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Feud over monument signs just keeps heating up

D.C. politics: Sen. Durbin wants Interior to put more pressure on Utah's Kane County - or else

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A Democratic senator continues to pressure the Interior Department to take legal action against Kane County over its posting of unauthorized road signs on federal land, including the Grand Staircase-Escalante National Monument.

But the department said last week that its standoff with the county over ownership of the roads is in limbo following a recent appeals court decision, and it is now seeking to negotiate instead of litigate.

The ruling in September by the 10th U.S. Circuit Court of Appeals in Denver "significantly alters" the legal landscape, and has forced the department to reassess its policies on the rural roads, Acting Assistant Interior Secretary Chad Calvert wrote last week in a letter to Illinois Sen. Richard Durbin.

"In light of these clarifications of the law, the department has determined that the most appropriate way for us to carry out our duties as they relate to Kane County's actions is to encourage the county to begin the consultation process the 10th Circuit rightly decided is so important in these situations," Calvert said in the letter to Durbin.

The comments echo those of Interior Secretary Gale Norton, who said last month during a stop in Utah that the department was crafting a new policy to reflect the court ruling.

But Durbin, a co-sponsor of the Red Rock Wilderness Act, is undeterred. He urged Interior to take legal action against the county last May, and did so again in a Nov. 1 letter to Norton, saying he was "deeply disappointed by the lack of resolve" shown by the department in the Kane County dispute - 10th Circuit ruling or no.

"I repeat," he said, "that the Department of Interior currently has the authority to remove the unauthorized signs and respond to the violations at issue."

Durbin said he would like a satisfactory response to his requests before the Senate considers the nomination of P. Lynn Scarlett, who has been nominated to serve as Deputy Interior Secretary.

Scarlett was nominated in February and approved by the Senate Energy and Natural Resources Committee a month later, but has been waiting for a full Senate vote ever since.

Kane County Commissioner Mark Habbeshaw said Monday that it was "regrettable" that Durbin and Senate Democrats are apparently playing hardball over the road sign issue.

"It's too bad that this is having national implications. It's too bad that this is holding things up at Interior. That was never our intent," Habbeshaw said. "I told [Interior] that if there was anything we can do to move Lynn Scarlett into that No. 2 spot, short of removing the signs, we'd be happy to do it. He did say they were interested in sitting down and seeing how we could resolve these issues."

But environmental groups have applauded Durbin's efforts to keep the heat on, and say they continue to be vexed by Interior's inability to act on the road sign issue.

"They're arguing that their hands are tied in the face of bullying from Kane County and can't do anything about this aggressive signing strategy. Nothing could be further from the truth," said Heidi McIntosh, conservation director for the Southern Utah Wilderness Society (SUWA). "The BLM has a full range of tools to get the county back in line. They could issue a trespass notice, they could take out the signs themselves. The 10th Circuit was

quite clear in saying that there is no ownership until the county shows documentation. They can't just put the signs in and claim the road as their own."

In February, Kane County began posting signs designating off-road vehicle routes across federal land, including routes inside the Grand Staircase-Escalante National Monument, some of which had been closed by the Bureau of Land Management.

County commissioners say they own the roads under Revised Statute 2477, a Civil War-era mining law that grants communities continued use of "highways" across federal lands that were used prior to 1976 when the law was repealed.

In May, then-BLM State Director Sally Wisely gave the county two weeks to remove the signs or face legal action. The county refused and the Interior Department sent the case to the U.S. Attorney's Office, but no charges have been filed.

The 10th Circuit in September ruled that counties need prove only 10 years of continuous use on roads to claim them, scuttling BLM policy that required that the state and counties provide proof of "mechanical" construction to show the routes are owned by them.

In October, several environmental groups, including SUWA, sued the county for enacting an ordinance allowing the county to post signs demarking the roads on the federal lands. On Monday, the county filed suit against Interior, challenging the monument's transportation and water plans.