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Kane County argues road sign suit

Grand Staircase area: Environmental groups say replacement violated BLM travel plans for it

By Joe Baird
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Kane County asked a federal judge Tuesday to dismiss a lawsuit that challenged the removal of federal road signs and the placement of county signs in and around the Grand Staircase-Escalante National Monument.

A coalition of environmental groups filed a lawsuit against the county last October, arguing that the signs - which largely lifted restrictions on off-highway vehicle travel - defied existing Bureau of Land Management travel plans for the area.

But county attorney Shawn Welch told Judge Tena Campbell during a hearing in downtown Salt Lake City that the county owned the roads in question and that only the federal government can challenge its ownership claims, which it has yet to do.

Welch also argued that any attempt to oppose the county's claims must also include the state, the co-owner of the roads. And that would negate the suit, he said, because the state cannot be sued in this instance in federal court.

"The only way relief can be granted is if it is shown that the county does not have a valid, existing right-of-way," Welch said.

The county, which removed BLM road signs in 2003 and posted its own signs last year, has claimed the roads under RS2477, a Civil War-era mining law that granted rights of way across federal lands. The law was repealed by Congress in 1976, but existing claims were grandfathered in, leading to numerous disputes over road ownership.

Welch says the county's ownership claims have been buttressed by a recent 10th Circuit appeals court decision that determined that state law, not the BLM, is the ultimate arbiter of who owns the roads.

The Interior Department, which initially challenged the county's sign placements and threatened litigation, has since implemented a new roads policy that mirrors the 10th Circuit decision and has been negotiating with the county in a bid to resolve the road sign issues.

Robert Wiygul, an attorney representing the Wilderness Society, the Southern Utah Wilderness Alliance (SUWA) and other groups, said that even with the appeals court ruling, the burden is still on the county to prove that it owns the roads. In Utah, that means showing 10 years of continuous use.

"The problem is, the county has put the cart before the horse," Wiygul said after the one-hour hearing.

But the real issue, he told Campbell, is that the county has flouted a BLM travel plan that was painstakingly negotiated by multiple parties - including the former Kane County commission - and implemented in order to

minimize OHV damage to the monument's most sensitive lands.

Wiygul said the environmental coalition has no issue with the state, which has passed no ordinances and posted no signs. He also argued that legal precedent allows them to challenge the county's actions.

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