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Kane backs off OHV stand

Vehicles won't be allowed on sensitive lands

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Bowing to legal pressure, Kane County commissioners have rescinded a controversial ordinance that permitted off-highway vehicle use in the Grand Staircase-Escalante National Monument and other federally owned lands, including hundreds of miles that had been previously closed.

Under the action taken by the commission on Monday, the county will remove OHV decals from signs it had placed on roads inside and outside the monument, effectively reinstating closures and restrictions that were put in place by the federal Bureau of Land Management.

Kane County Commissioner Mark Habbeshaw acknowledged Tuesday that "legal issues" - a lawsuit filed last year by environmental groups challenging the ordinance - forced the county's hand. But he called the retreat only a temporary setback in the county's larger battle to assert its right of way claims on federally managed lands.

"It's essentially too big a bite of the apple to defend our property rights and the management of OHVs at the same time," Habbeshaw said. "We're trying to secure our rights-of-way under RS2477, and that is being overshadowed by the issue of OHV damage on federal lands, whether it's a real problem or not."

Revised Statute 2477 is an old mining law that granted rights of way across public lands. Congress repealed the statute in 1976, but existing routes were grandfathered in, leading to numerous road ownership disputes in Utah.

Environmentalists who challenged the OHV ordinance were generally happy with the county's reversal.

"We're pleased they rescinded what was obviously an unconstitutional OHV ordinance that invited off-road vehicles into sensitive areas where damage can occur," said Heidi McIntosh, conservation director of the Southern Utah Wilderness Society.

McIntosh added, however, that no decision will be made about the status of the lawsuit until SUWA and its partner, the Wilderness Society, see the county's formal proposal.

And the two conservation groups are distinctly unenthusiastic about Kane County's stated intention to press the Legislature for changes in state law that would "further delineate and support" the operation of OHVs on public roads in the state.

"This looks like another attempt by the county to shift the cost of its legal battles onto the Utah taxpayer," said the Wilderness Society's Kristen Brengel. "That ought to be of concern to the governor and all Utahns."

The future of Kane County's OHV ordinance was essentially sealed in August when U.S. District Court Judge Tena Campbell rejected the county's bid to have the lawsuit dismissed. In the ruling, she also said the county could not claim ownership of monument roads without furnishing proof of ownership - the Utah standard of 10 years of continuous use before 1976, as laid out by the 10th Circuit Court of Appeals last year.

Also still hanging out there is the issue of the county's monument-road signs themselves, which were posted last year in defiance of the BLM's travel plan for the area.

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