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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

THE WILDERNESS SOCIETY and SOUTHERN
UTAH WILDERNESS ALLIANCE,

Plaintiffs,

v.

KANE COUNTY, UTAH; RAY SPENCER, in his
official capacity as KANE COUNTY
COMMISSIONER; MARK HABBESHAW, in his
official capacity as KANE COUNTY
COMMISSIONER; and DANIEL W. HULET, in his
official capacity as KANE COUNTY
COMMISSIONER,

Defendants.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Judge Tena Campbell
DECK TYPE: Civil
DATE STAMP: 10/13/2005 @ 11:49:42
CASE NUMBER: 2:05CV00854 TC

INTRODUCTION

1. Kane County, Utah contains some of this nation's most stunning and beloved federal public lands. Portions of Zion and Bryce Canyon National Parks, the Grand Staircase-Escalante National Monument, Glen Canyon National Recreation Area, Paria Canyon-Vermilion Cliffs Wilderness area, and several wilderness study areas all lay within the County's borders. This case has arisen because Kane County and County officials (collectively "Kane County" or "the County") have flouted the United States Constitution and the management authority of the United States Department of Interior by unilaterally opening up these fragile federal lands to destructive off-road vehicle (ORV) use. In addition to passing county ordinances declaring a wide array of roads and routes open to ORVs – including hundreds of miles of roads and routes closed to ORVs by the governing federal land management authorities – the County has even gone so far as to post its own road signs on federal land and rip down federal agency signs announcing ORV restrictions. The County's actions violate the Supremacy Clause of the United States Constitution and should be declared unlawful and enjoined by this Court.

JURISDICTION AND VENUE

2. Plaintiffs bring this case pursuant to the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2.
3. This Court has jurisdiction over this action by virtue of 28 U.S.C. § 1331 (federal question jurisdiction).
4. Venue in this Court is proper under 28 U.S.C. § 1391(b) because Kane County, Utah is located in this District, a substantial part of the events giving rise to this claim occurred

in this District and a substantial part of the property that is the subject of this claim is situated in this District.

PARTIES

5. Plaintiff THE WILDERNESS SOCIETY (TWS) is a non-profit environmental organization incorporated in Washington, DC, with approximately 200,000 members nationwide. TWS has eight regional offices and a headquarters in Washington, D.C. TWS employees and members work to protect America's wilderness and to develop a national network of wildlands through public education, scientific analysis, and advocacy. TWS's goal is to ensure that future generations will enjoy the clean air and water, wildlife, natural beauty, opportunities for recreation, and spiritual renewal that pristine forests, rivers, deserts, and mountains provide.

6. As part of its wilderness-preservation mission, TWS strives to protect the wilderness character of Congressionally-designated wilderness, wilderness study areas (WSAs), national monuments, national parks, and other federal public lands with wilderness character. Some of the elements of wilderness character that TWS is dedicated to protecting include roadlessness, natural quiet, absence of motor vehicle use, and "ecological, geological, or other features of scientific, educational, scenic, or historical value." *See* 16 U.S.C. § 1131(c).

7. Plaintiff SOUTHERN UTAH WILDERNESS ALLIANCE (SUWA) is a not-for-profit conservation organization incorporated in Utah with more than 18,000 members, many of whom live in Utah. SUWA is dedicated to preserving the outstanding wilderness at the heart of the Colorado Plateau, and encouraging management of those lands in their natural state. SUWA promotes local and national recognition of the region's unique character through research and public education; supports both administrative and legislative initiatives to permanently protect

the Colorado Plateau wild places within the National Park and National Wilderness Preservation System or by other protective designations where appropriate; builds national support for such initiatives on both the local and national level; and provides leadership within the conservation movement through uncompromising advocacy for wilderness preservation.

8. As part of its conservation mission, SUWA strives to protect the wilderness character of Congressionally-designated wilderness, WSAs, national monuments, national parks, and other federal public lands with wilderness character. Some of the elements of wilderness character that SUWA is dedicated to protecting include roadlessness, natural quiet, absence of motor vehicle use, and “ecological, geological, or other features of scientific, educational, scenic, or historical value.” *See* 16 U.S.C. § 1131(c).

9. In the mid-1980s, TWS, SUWA, and other national and regional conservation organizations conducted an independent wilderness inventory of Utah lands managed by the Bureau of Land Management (BLM). This inventory was completed in 1989 and proposed to designate 5.7 million acres of Utah BLM lands as wilderness. These lands were proposed for wilderness designation in America’s Redrock Wilderness Act, a version of which has been introduced every session of Congress in the U.S. House of Representatives since 1989, and in the U.S. Senate since 1997. When the wilderness inventory was updated in 1998, the conservation groups concluded that just over 9 million acres of BLM land in Utah merited wilderness protection. Of these 9 million acres, approximately 1.3 million acres are located in Kane County. 1.1 million of those acres are located within the Grand Staircase-Escalante National Monument.

10. Members and staff of TWS and SUWA use and enjoy the magnificent federal public lands in Kane County for a variety of purposes, including scientific study, wildlife viewing, photography, recreation, aesthetic appreciation, and appreciation of cultural artifacts. Members and staff of TWS and SUWA frequently visit and recreate on federal land lands that may be impacted by vehicle use on the routes that Kane County has signed or claimed as open to ORV use. In addition, members and staff of TWS and SUWA have actively supported the designation of protected federal public lands in Kane County, including the Grand Staircase-Escalante National Monument, and have advocated and litigated in support of restrictions on ecologically and culturally destructive ORV use on Utah's federal public lands.

11. Defendant KANE COUNTY, UTAH is a political subdivision of the State of Utah.

12. Defendant RAY SPENCER is Chairman of the Board of Commissioners of Kane County. Mr. Spencer is a member of the County Commission that is empowered to adopt County ordinances governing the management of vehicles on County roads in Kane County. He is sued in his official capacity.

13. Defendant MARK HABBESHAW is a member of the Board of Commissioners of Kane County. Mr. Habbeshaw is a member of the County Commission that is empowered to adopt County ordinances governing the management of vehicles on County roads in Kane County. He is sued in his official capacity.

14. Defendant DANIEL W. HULET is a member of the Board of Commissioners of Kane County. Mr. Hulet is a member of the County Commission that is empowered to adopt

County ordinances governing the management of vehicles on County roads in Kane County. He is sued in his official capacity.

LEGAL FRAMEWORK

The United States Constitution

15. Pursuant to the Supremacy Clause of the U.S. Constitution, federal statutes and regulations, as well as the policies and objectives encompassed therein, preempt conflicting state and local laws, policies, and objectives. “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

16. The U.S. Congress has plenary power over federal public lands under the Property Clause of the U.S. Constitution. “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular state.” U.S. Const. art. IV, § 3, cl. 2.

17. Accordingly, when Congress chooses to exercise its jurisdiction over federal public lands under the Property Clause, federal statutes and regulations, orders and decisions issued pursuant to those statutes and regulations, and the policies and objectives encompassed within those statutes and regulations preempt and override any conflicting state or local laws, regulations, policies, or objectives.

The Federal Land Policy and Management Act and Implementing Regulations

18. The BLM manages its lands pursuant to the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 *et seq.* Among other things, FLPMA provides that the BLM is to manage its lands for “multiple use,” specifically mandating that:

the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.

Id. § 1701(a)(8).

19. FLPMA requires the BLM to manage the “use, occupancy, and development” of its lands. *Id.* § 1732(b). To do so, the BLM must develop land use plans. *Id.* § 1712(a). Once a plan is completed, the BLM must manage the use of its lands “in accordance with” the plan. *Id.* § 1732(a); 43 C.F.R. § 1610.5-3 (BLM regulation likewise requiring that BLM’s actions conform with the plan).

20. The BLM’s management plans determine where ORVs may travel. FLPMA prohibits any uses in contravention of these plans. “The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited.” 43 U.S.C. § 1733(g).

21. Section 201 of FLPMA required BLM to inventory its lands and resources, including scenic and outdoor recreation values. 43 U.S.C. § 1711. Pursuant to Section 603, BLM was required to determine which of the lands inventoried are eligible for wilderness designation within 15 years. *Id.* § 1782(c). To safeguard Congress’s prerogative to designate the

“Wilderness Study Areas” (“WSAs”) as wilderness, FLPMA § 603(c) requires BLM to manage WSAs so that their wilderness suitability is not “impaired.” *Id.* Shortly after FLPMA’s passage, BLM adopted an Interim Management Policy for Lands Under Wilderness Review, in which it set out in detail how the agency would manage WSAs. 44 Fed. Reg. 72,014 (Dec. 12, 1979). In general, public motor vehicle use in WSAs is prohibited, except along identified “ways” and where such use would not impair an area’s wilderness suitability.

The Wilderness Act

22. The Wilderness Act, 16 U.S.C. § 1131-1136, provides for Congressional designation of areas “where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain.” 16 U.S.C. § 1131(c). A Wilderness area is further defined as:

an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation. . . and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

Id.

23. The Wilderness Act generally prohibits permanent or temporary roads and the use of motor vehicles or any other form of mechanical transport in a Wilderness area. *Id.* § 1133(c).

The National Park Service Organic Act and Implementing Regulations

24. The 1916 National Park Service (NPS) Organic Act, as amended, provides that the NPS is to “regulate the use” of national parks by means that conform to their “fundamental purpose,” namely:

to conserve the scenery and natural historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

16 U.S.C. § 1. A 1978 amendment to this act prohibits the authorization of activities (such as off-road vehicle use) that may derogate park values. 16 U.S.C. § 1a-1.

25. In order to address the “widespread” use of off-road vehicles on public land – use which was “in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity” – President Richard Nixon issued Executive Order 11644, 37 Fed. Reg. 2887 (Feb. 9, 1972), which mandates restrictions on off-road vehicles. E.O. 11644 is intended to “ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands.” *Id.* at Sec. 1. The Order directs agency heads with stewardship over public lands to promulgate regulations providing for the “administrative designation of the specific areas and trails on public lands on which the use of off-road vehicles may be permitted, and areas in which the use of off-road vehicles may not be permitted.” *Id.* at Sec. 3(a). E.O. 11644 further directs that the regulations must require the designation of such areas in accordance with certain listed directives, including a directive providing that areas and trails shall not be located in national parks unless the agency head “determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.” *Id.* at Sec. 3(a)(4).

26. In accordance with the National Park Service Organic Act and E.O. 11644, the NPS promulgated the following regulation:

Travel on park roads and designated routes.

(a) Operating a motor vehicle is prohibited except on park roads, in parking areas and on routes and areas designated for off-road vehicle use.

(b) Routes and areas designated for off-road vehicle use shall be promulgated as special regulations. The designation of routes and areas shall comply with § 1.5 of this chapter and E.O. 11644 (37 FR 2887). Routes and areas may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.

36 C.F.R. § 4.10 (1987). Thus, ORV travel in National Park System units is prohibited unless and until the NPS adopts a special regulation opening a route or area to such use.

Relevant Utah Law Regarding Roads and Highways

27. Utah State law provides that “[c]urrently registered off-highway vehicles may be operated on public land, trails, streets, or highways that are posted by sign or designated by map or description as open to off-highway vehicle use by the controlling federal, state, county, or municipal agency.” In addition, the

controlling federal, state, county, or municipal agency may:

- (a) provide a map or description showing or describing land, trails, streets, or highways open to off-highway vehicle use; or
- (b) post signs designating lands, trails, streets, or highways open to off-highway vehicle use.

Utah Code § 41-22-10.1.

28. Utah State law further provides for several different classes of highways. Class A routes are state highways under the jurisdiction of the State; Class C routes are city streets under the jurisdiction of municipalities. *Id.* § 72-3-102 (Class A routes); § 72-3-104 (Class C routes). Class B routes are county roads, which are roads the county is required to maintain. *Id.* § 72-3-103. Class D routes include “any road, way, or other land surface route that has been or is established by use or constructed and has been maintained to provide for usage by the public for vehicles with four or more wheels that is not a class A, class B, or class C road under this title.” *Id.* § 72-3-105(1).

29. Each county was required to “prepare maps showing to the best of its ability the class D roads within its boundaries which were in existence as of October 21, 1976,” the date of FLPMA’s passage. *Id.* § 72-3-105(5). Upon completion of the maps, each county was required to file the maps with Utah Department of Transportation. *Id.* § 72-3-105(7).

STATEMENT OF FACTS

Kane County and Its Federal Public Lands

30. Kane County, located in south-central Utah on the state’s border with Arizona, encompasses more than 2.6 million acres in southwestern Utah. Some of the most spectacular public lands in the nation are located within its borders.

31. Kane County encompasses a large array of federal public lands. Within the County, the BLM manages about 1.6 million acres, including nearly 1.3 million acres within the Grand Staircase-Escalante National Monument. The Monument contains some of the most remote and wild areas of southern Utah. In addition to the Monument, the BLM manages several WSAs in Kane County, including the Parunuweap, Moquith Mountain, and Orderville Canyon WSAs. The BLM also manages the Paria Canyon-Vermilion Cliffs Wilderness, a portion of which is located in Kane County.

32. The NPS manages nearly 400,000 acres in Kane County, including more than 8,000 acres of Bryce Canyon National Park at the Park’s southern end and more than 9,000 acres of Zion National Park at the Park’s eastern border. In addition, the County encompasses more than 375,000 acres of the Glen Canyon National Recreation Area (NRA), which is managed by the NPS.

The Grand Staircase-Escalante National Monument

33. The Grand Staircase-Escalante National Monument was created by presidential proclamation on September 18, 1996. The proclamation describes the Monument's lands as follows:

The Grand Staircase Escalante National Monument's vast and austere landscape embraces a spectacular array of scientific and historic resources. This high, rugged, and remote region, where bold plateaus and multi-hued cliffs run for distances that defy human perspective, was the last place in the continental United States to be mapped. Even today, this unspoiled natural area remains a frontier, a quality that greatly enhances the monument's value for scientific study. The monument has a long and dignified human history: it is a place where one can see how nature shapes human endeavors in the American West, where distance and aridity have been pitted against our dreams and courage. The monument presents exemplary opportunities for geologists, paleontologists, archeologists, historians, and biologists.

61 Fed. Reg. 50223 (Sept. 24, 1996). The objects the Monument was established to protect include geologic, paleontological, archeological, historical, ecological, and biological resources, among others. *Id.* The Monument also contains designated critical habitat for the threatened Mexican spotted owl, a species protected under the Endangered Species Act.

34. In November 1998, the BLM released a draft management plan and draft environmental impact statement (EIS) for the Monument, pursuant to 43 U.S.C. § 1712. A four-month public comment period followed. BLM issued a final EIS and draft management plan in July 1999. 64 Fed. Reg. 41129-41130 (July 29, 1999). The final plan and record of decision were signed by the Secretary of Interior in November 1999, and became effective in February 2000. 65 Fed. Reg. 10819-10821 (Feb. 29, 2000).

35. Under the final management plan, vehicle travel off of designated routes in the Monument is generally prohibited. Street legal motorized vehicles, including four-wheel-drive

and mechanized vehicles (including bicycles), are allowed on approximately 908 miles of routes designated open by the plan. ORVs, i.e., non-street legal all-terrain vehicles and dirt bikes, are allowed on approximately 553 miles of those 908 miles of routes. ORV travel is restricted to those routes designated as open for their use. *Id.*

36. According to the Final EIS on the Management Plan, the Monument banned cross-country ORV travel because such use can impact “archaeological, paleontological, geological, historic, biological soil crusts, special status plant and animal species, vegetation, and wildlife” resources. For example, ORV tracks can create ruts, which collect water and damage water quality and quantity and create erosion. In addition, some wildlife species avoid areas where ORVs are ridden, which can prevent the use of roosts, nests, calving and fawning areas, and other critical habitat.

BLM Lands Outside the Monument in Kane County

37. Outside of the Monument, along the border of Utah and Arizona and within Kane County, BLM manages the Paria Canyon-Vermilion Cliffs Wilderness, which was designated as Wilderness in 1984 by Congress. Pub. L. 98-406, title III, § 301(a)(7) (Aug. 28, 1984).

38. BLM also manages several WSAs in Kane County pursuant to FLPMA’s “non-impairment” mandate. 43 U.S.C. § 1782. These WSAs include the Parunuweap Canyon WSA, Moquith Mountain WSA and the Orderville Canyon WSA.

39. The 30,000-acre Parunuweap Canyon WSA is adjacent to Zion National Park, and it contains canyons of stunning scenic beauty comparable to those in Zion. The 1,750-acre Orderville Canyon WSA is north of the Parunuweap Canyon WSA and adjacent to Zion National Park. In 2000, the BLM issued an emergency ORV travel limitation in the Parunuweap and

Orderville Canyon WSAs. 65 Fed. Reg. 52437 (Aug. 29, 2000). The emergency measure prohibits all cross-country ORV travel and limits ORVs to designated routes. *Id.* The BLM instituted the emergency limitations in order “to prevent resource impacts to soils, vegetation, wildlife habitat, and other resources caused by OHV use within the WSAs that threaten impairment to wilderness values.” *Id.* The BLM found that in some areas of the Parunuweap WSA, ORV use was impacting riparian vegetation and that illegal ORV use was occurring off of designated routes. *Id.* The emergency limitation is still in effect.

40. The nearly 15,000-acre Moquith Mountain WSA borders the Coral Pink Sand Dunes State Park near Utah’s southern border. The area contains hanging gardens, isolated stands of Ponderosa pine, large alcoves, sand dunes, and prehistoric sites including pictographs. In 2000, the BLM completed an amendment to the plan governing the Moquith Mountain WSA. *See* 65 Fed. Reg. 19921 (April 13, 2000). The plan amendment restricts ORV travel in the majority of the WSA to designated routes.

41. Within the last few months, the BLM also closed approximately 7,900 acres in the Hog Canyon and Trail Canyon areas near Kanab, Utah to cross-country ORV travel. 70 Fed. Reg. 46541 (August 10, 2005). The BLM closed Trail Canyon to all ORV use and limited ORV travel in Hog Canyon to specified routes. *Id.* The BLM restricted ORV travel in these areas because “increased [ORV] use is creating adverse impacts to riparian, soil, vegetation, wildlife, and cultural resources.” *Id.*

National Park Lands in Kane County

42. Congress established the Glen Canyon NRA to “provide for public outdoor recreation use and enjoyment of Lake Powell and lands adjacent thereto in the States of Arizona

and Utah and to preserve the scenic, scientific, and historic features contributing to public enjoyment of the area....” Pub.L. 92-593, 86 Stat. 1311 (Oct. 27, 1972). The NRA protects much of the Escalante River and its canyon, natural arches and bridges, hoodoos, and slot canyons. More than 380,000 acres of the NRA are located in Kane County.

43. No regulation permits off-road vehicle travel within the Glen Canyon National Recreation Area.

44. Bryce Canyon National Park was originally established as a national monument in 1923 because of its “unusual scenic beauty, [and] scientific interest and importance.” Proclamation No. 1664 (June 8, 1923). Congress designated the area as Utah National Park in 1924, and gave the area its present name in 1928. 43 Stat. 593 (June 7, 1924); 45 Stat. 147 (Feb. 28, 1928).

45. No regulation permits off-road vehicle travel within Bryce Canyon National Park.

46. Zion National Park encompasses 148,016 acres, stretching across three counties in southwestern Utah, of which approximately 9,000 acres are in Kane County. The southeastern portion of the Park was first set aside as a national monument in 1909, which was expanded in 1918. Congress established the 75,000-acre area as a national park in 1919. A second Zion National Monument was established by presidential proclamation in 1937. Congress added this area, now called the Kolob Canyons, to Zion National Park in 1956. Zion National Park is characterized by high plateaus, a maze of narrow, deep, sandstone canyons and striking rock towers and mesas.

47. The NPS has promulgated a final “special rule” that permits limited snowmachine travel on four routes within Zion National Park. *See* 36 C.F.R. § 7.10(b). None of these routes is

within Kane County. No regulation permits off-road vehicle travel in Zion National Park within Kane County.

Kane County's Unconstitutional Actions

48. In 1978, in compliance with the Utah state code, Kane County adopted a map identifying all Class D "roads" in the County, and submitted it to the Utah Department of Transportation. The map identifies, among other things, every hiking trail in Zion National Park within Kane County, several hiking trails and wash bottoms in Bryce Canyon National Park within Kane County, and thousands of miles of other routes through the Monument, the Glen Canyon NRA, and other BLM lands as Class D roads.

49. In the summer of 2003, officials of Kane County, including County Commissioner Mark Habbeshaw and Sheriff Lamont Smith, removed BLM signs restricting ORV travel within the Monument. Although the BLM initiated a criminal investigation of the County officials who admitted to tearing the signs down, no legal action has ever been taken against the officials.

50. In the spring of 2005, Kane County officials, including Commissioner Mark Habbeshaw, Road Supervisor Lou Pratt, and workers under Mr. Pratt's supervision, erected County signs on federal lands within the Monument. The signs indicate that the posted routes are County roads open to ORV use.

51. According to BLM records, as of June 21, 2005 there were 268 Kane County signs posted on BLM lands, including 103 inside the Monument, and 3 more outside the Monument boundary that sign routes that enter the Monument.

52. Of the 106 signs affecting the Monument, at least 63 signs purport to open routes to public ORV use that are closed to such use in the Monument's Management Plan.

53. Kane County officials also posted additional signs on BLM lands outside of the Monument, including Wilderness Study Areas. According to BLM records, as of June 21, 2005, Kane County had placed 162 such signs (in addition to the three signs marking routes entering the Monument) on BLM lands outside the Monument. At least six of these signs appear to mark routes as open that are closed to ORV use in the Moquith Mountain and Parunuweap Wilderness Study Areas.

54. On April 26, 2005, BLM Utah State Director Sally Wisely sent Kane County Commissioner Mark Habbeshaw a letter stating that BLM would take action within two weeks to address the illegal signing. The letter stated that the illegal signing "may likely present serious safety issues to members of the public, possibly subject them to legal exposure, and cause resource damage." In response, Kane County removed some signs, but left hundreds of signs on BLM lands. On June 30, 2005, BLM referred the matter to the U.S. Attorney's office.

55. As of this date, neither the U.S. Attorney nor BLM has taken any legal action against the County in response to the County's removal of BLM signs and unauthorized erection of County signs within the Monument.

56. On August 22, 2005, the Kane County Board of Commissioners unanimously passed Ordinance No. 2005-03. That ordinance purports to regulate ORV use on County Class B and Class D roads. According to the ordinance, Kane County had previously designated all County roads open to ORV use.

57. Ordinance No. 2005-03 states in pertinent part as follows:

Kane County claims the right and ownership of all Class B and Class D roads designated on the County Road System

Kane County has designated all Class B and Class D roads as open, unless designated closed to off-highway vehicle (OHV) use

Currently registered OHVs may be operated on the County Road System as posted by sign or designated by map or description as open to off-highway vehicle use by the County

The ordinance further defines "OHVs" as motorcycles, snowmobiles, and all-terrain vehicles.

58. During consideration of the ordinance in a July 18, 2005, meeting of the Kane County Board of Commissioners, Michael Mayer, Chief Ranger for Glen Canyon NRA, testified that "[w]e recognize [that] the passage of a Kane County Off Highway Vehicle Ordinance as currently proposed will create a conflict between county and federal regulations." Ranger Mayer requested that the ORV ordinance not apply to Glen Canyon NRA. Nonetheless, at that same hearing, Commissioner Daniel Hulet stated that the County intended to sign roads within the Glen Canyon NRA.

59. On August 22, 2005, at another Board of Commissioners meeting, Monument Manager Dave Hunsaker requested that there be consistency between Kane County's and the Monument's regulation of the use of motor vehicles within the Monument, and that the ordinance not purport to regulate ORV use on routes closed to motorized use by the BLM's Management Plan.

60. The ordinance, by permitting ORVs to be used on routes posted by signs and on routes identified on the County's Class B and Class D road maps, approved the use of ORVs on public lands within the Monument, within Bryce Canyon and Zion National Parks, within the

Glen Canyon NRA, and within other BLM lands where the United States currently prohibits ORV use.

FIRST CAUSE OF ACTION

(Violation of the Supremacy Clause of the U.S. Constitution on BLM Lands)

61. The allegations in paragraphs 1-60 are incorporated herein by reference.
62. Under the Supremacy Clause of the U.S. Constitution, federal statutes and regulations, orders and plans issued pursuant to federal legislation, and the policies and objectives contained within federal legislation preempt conflicting state and local laws, policies, and objectives. U.S. Const. art. VI, cl. 2.
63. Pursuant to the Property Clause of the U.S. Constitution, Congress mandated that BLM manage the use of its lands pursuant to the Federal Land Policy and Management Act and its implementing regulations and pursuant to the Wilderness Act. 43 U.S.C. § 1701 *et seq.*; 43 C.F.R. § Part 1600; 16 U.S.C. § 1131-1136.
64. Pursuant to FLPMA and its implementing regulations, the BLM issued a Management Plan for the Grand Staircase-Escalante National Monument. The Management Plan prohibits all cross-country ORV travel and limits ORV travel to certain designated routes.
65. Pursuant to FLPMA and its implementing regulations, BLM issued an emergency ORV travel limitation for Parunuweap and Orderville Canyon WSAs, prohibiting cross-country ORV travel and limiting ORV use to designated routes.
66. Pursuant to FLPMA and its implementing regulations, BLM has restricted ORV use to designated routes in the majority of the Moquith Mountain WSA.
67. Pursuant to the Wilderness Act, motorized use is prohibited in the Paria Canyon-Vermilion Cliffs Wilderness.

68. Pursuant to FLPMA and its implementing regulations, BLM has restricted ORV travel in the Hog Canyon area to designated routes and closed the Trail Canyon area to any ORV travel.

69. Congress intended to preempt conflicting state and local management of the use of BLM lands. Kane County's purported opening of routes to ORV use on BLM lands, including, but not limited to its passage of Ordinance 2005-3 and the destruction of BLM signs and erection of County route signs on BLM lands, conflicts with federal statutes and regulations and decisions and orders issued pursuant to those statutes and regulations, and impedes the fulfillment of the objectives and policies encompassed within the federal legislation.

70. Kane County's purported opening of roads on BLM lands is preempted by federal law and violates the Supremacy Clause of the U.S. Constitution, art. VI, cl. 2.

SECOND CAUSE OF ACTION

(Violation of the Supremacy Clause of the U.S. Constitution on NPS lands)

71. The allegations in paragraphs 1-60 are incorporated herein by reference.

72. Under the Supremacy Clause of the U.S. Constitution, federal statutes and regulations, orders and plans issued pursuant to federal legislation, and the policies and objectives contained within federal legislation preempt conflicting state and local laws, policies, and objectives. U.S. Const. art. VI, cl. 2.

73. Pursuant to the Property Clause of the U.S. Constitution, Congress mandated that the NPS manage the use of its lands pursuant to the National Park Service Organic Act and its implementing regulations. 16 U.S.C. § 1 *et seq.*

74. NPS regulations promulgated pursuant to the National Park Service Organic Act and Executive Order 11644 prohibit ORV travel on National Park Service lands unless and until the NPS adopts a special regulation opening a route or an area to ORV use. 36 C.F.R. § 4.10.

75. The NPS has not passed a special regulation allowing ORV travel within the borders of Kane County for Glen Canyon National Recreation Area, Bryce Canyon National Park, or Zion National Park.

76. Congress intended to preempt conflicting state and local management of NPS lands. Kane County's purported opening of roads on BLM lands, including, but not limited to its passage of Ordinance 2005-3, conflicts with federal statutes and regulations and decisions and orders issued pursuant to those statutes and regulations, and impedes the fulfillment of the objectives and policies encompassed within that federal legislation.

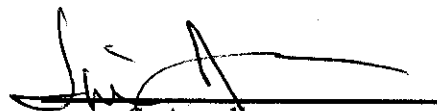
77. Kane County's purported opening of roads on National Park Service lands is preempted by federal law and violates the Supremacy Clause of the U.S. Constitution.

PRAYER FOR RELIEF

- (1) Declare unconstitutional Kane County Ordinance No. 2005-03 as applied to federal public lands, including the Grand Staircase-Escalante National Monument, Glen Canyon National Recreation Area, Zion National Park, Bryce Canyon National Park, Paria Canyon-Vermilion Cliffs Wilderness, Parunuweap Wilderness Study Area, Moquith Mountain Wilderness Study Area, Orderville Canyon Wilderness Study Area, and Hog Canyon and Trail Canyon areas;

- (2) Declare unconstitutional Kane County's posting signs or otherwise indicating as open to ORV use any route now closed to ORV use pursuant to federal law or regulation, or management plan or other decision issued pursuant to federal law.
- (3) Enjoin Kane County from adopting ordinances, posting signs or otherwise indicating as open to ORV use any route now closed to ORV use pursuant to federal law, regulation, management plan, or other decision issued pursuant to federal law.
- (4) Enter an injunction ordering Kane County to remove its County signs from federal public lands where those signs conflict with federal plans, regulations, or other authority.
- (5) Grant Plaintiffs such other injunctive and declaratory relief as this Court deems just and proper.
- (6) Award Plaintiffs reasonable attorney fees, costs and expenses incurred in pursuing this action to the extent permitted by law.

Respectfully submitted October 13, 2005,


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Attorneys for Plaintiff Southern Utah
Wilderness Alliance

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
THE WILDERNESS SOCIETY and
SOUTHERN UTAH WILDERNESS ALLIANCE

(b) County of Residence of First Listed Plaintiff Washington, D.C.
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

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 Heidi J. McIntosh and Stephen H. Bloch
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Robert B. Wiygul, WALTZER & ASSOCIATES, P.O. Box 689
 Ocean Springs, MS 39566 Tel: 228-374-0700

DEFENDANTS
 KANE COUNTY, UTAH; RAY SPENCER, in his official capacity as KANE COUNTY COMMISSIONER; MARK HABBESHAW, in his official capacity as KANE COUNTY DISTRICT ATTORNEY; and DANIEL W. HULET, in his official capacity as KANE COUNTY COMMISSIONER

County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

BY: DEPUTY CLERK

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 880 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Supremacy Clause of the U.S. Constitutions Art. VI cl. 2

Brief description of cause:
Challenge to county's management efforts on federal public lands

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 10-12-05 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____