The Salt Lake Tribune http://www.sltrib.com

Judge rebuffs Kane, Garfield claims on Grand Staircase-Escalante roads

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The Salt Lake Tribune
Salt Lake Tribune

Article Launched:

A federal judge has dismissed a lawsuit over land use in the Grand Staircase-Escalante National Monument, ruling Kane and Garfield counties can neither can claim ownership of roads that crisscross the monument's 1.8 million acres nor expect the U.S. Bureau of Land Management to do so for them.

That's because the BLM doesn't have the power to make binding decisions on road ownership, U.S. District Judge Bruce Jenkins ruled Friday. Further, the counties haven't yet proved ownership under required "quiet title" action, the judge said, rendering their lawsuit premature.

The lawsuit filed last year affects the monument President Clinton created in 1996 under the federal Antiquities Act. It also has implications for the ongoing battle over mechanized access to wilderness-potential areas in Utah that has pitted environmental organizations seeking to conserve roadless areas against local officials who fear wilderness designation will harm their economies.

The counties "tried to overturn all the protections limiting . . . off-highway vehicle travel [in the monument] based on unsupported allegations without proof there were a bunch of highways out there, somewhere," Earthjustice attorney Ted Zukoski said Monday. "The judge said they have to prove each and every road."

Zukoski represented the Southern Utah Wilderness Alliance, which intervened as a defendant

in the case along with the National Trust for Historic Preservation, the Sierra Club and the Wilderness Society. The counties filed the lawsuit against the U.S. Department of the Interior and the BLM, as well as agency principals.

Jenkins' ruling allows the counties to file an amended complaint within 20 days.

Kane County Commissioner Mark Habbeshaw said Monday he hadn't spoken to his county's attorney nor read the ruling, but expected a return to court either with an amended claim or an appeal.

Revised Statute 2477 is a Civil War-era mining law that allowed counties and cities to construct roads across federal land. The open-ended language was repealed three decades ago, but existing rights of way were grandfathered in.

Two years ago the 10th U.S. Circuit Court of Appeals ruled state laws dictate how the road claims are to be decided. In Utah, the law says "existing" roads are those that had 10 years of continuous use and county maintenance before 1976. Continuous-use claims under quiet title actions now must be decided road by road in federal court.

But to litigate every road claim "would be overwhelmingly expensive to everybody, to us, to the federal court," Habbeshaw said. The county has 1,000 roads and each would cost at least $100,000 to take to court, he added.

Utah already has spent $12 million gathering evidence to help the counties prove their claims. "We don't have one road to show for that," Habbeshaw said.

Jenkins also dismissed the counties' claims they would be harmed if the monument plan doesn't loosen its restrictions on water diversions for agriculture or commercial use. The judge said the BLM has yet to act on a Kane County water-district request the agency heard in January, so the claim is premature.