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21. PUBLIC LANDS

Utah threatens more RS 2477 lawsuits for control of roads

Dan Berman, *Greenwire* reporter

Unhappy with the way the Interior Department is managing some roads and trails on public lands, the state of Utah is threatening additional lawsuits for rights-of-way provided by the 1866 law known as RS 2477.

At the end of August, Utah's Office of the Attorney General told Interior Secretary Gale Norton the state intends to sue for the rights to 10 roads in the San Rafael Swell region in Emery County because of steps the department has taken to restrict access. At least two of the routes at issue are in wilderness study areas, according to the Southern Utah Wilderness Alliance.

Utah Assistant Attorney General Ralph Finlayson hinted future lawsuits are in the works. "It is our expectation to file additional notices of intent to sue, but they're still undefined at this moment," Finlayson said. "Until it happens, I can't say that it will or won't."

This summer, Utah officials sent Interior a notice of its desire to join San Juan County's lawsuit in Utah District Court for control over an eight-mile road in Canyonlands National Park. The county filed its lawsuit in May after years of fighting the National Park Service to keep the Salt Creek road open to motorized vehicles. A series of lawsuits beginning in 1995 resulted in the Park Service closing the road to motorized vehicle traffic in 1998, an action the agency made permanent earlier this year (*Greenwire*, Aug. 12).

The state has to wait six months before acting on a notice of intent to sue Interior.

Utah's threatened legal action affecting national parks and wilderness study areas underscores environmentalists' fears that RS 2477 claims will be used to curb restrictions on development and motorized vehicle use, said SUWA's Heidi McIntosh. Under RS 2477, states can claim rights-of-way that existed before land was designated as federal property.

"All along we've been saying there's tremendous potential for RS 2477 claims to undercut public lands management," McIntosh said. "This is the most dramatic example."

Plans for the San Rafael Swell area have included possible national park or monument designations, and the Bureau of Land Management last year for the first time designated off road vehicle (ORV) trails and increased enforcement, closing 468 miles of routes to ORV use but allowing use on over 2,000 miles of BLM and local roads and trails (*Land Letter*, Feb. 20, 2003).

McIntosh questioned whether the 10 routes at issue would even qualify as a "highway" under RS 2477. "These are basically rough trails," McIntosh said. "It would be difficult for any type of normal vehicle to travel on without losing an oil can or other crucial parts."

Utah's Aug. 31 letter to Norton hints at the BLM restrictions. "Federal officials in the Department of the Interior have also interfered with the actions of state and local officials and personnel in connection with maintenance,

improvement, construction, management and other normal highway activities on those RS 2477 rights-of-way," the letter states.

"Officials in your administration are now claiming that RS 2477 rights-of-way require their official recognition and that maintenance activities require their permission," the letter continues. "This situation is intolerable and amounts to a federal claim of interest adverse to that of the state and a usurpation of property rights vested in the state."

Finlayson said the Aug. 31 letter was sent to facilitate negotiations with Interior and declined to elaborate on its contents, citing state confidentiality laws. No negotiations have taken place thus far, an Interior official stated.

The two lawsuit threats from Utah demonstrate the state is taking a dual track in pursuing RS 2477 claims. The state is continuing to work with Interior under an April 2003 memorandum of understanding that Norton and former Gov. Mike Leavitt (R) -- now U.S. EPA administrator -- signed outlining the process by which Utah and its counties could submit roads to BLM for evaluation as rights-of-way candidates. Under the agreement, BLM is charged with determining whether to issue a "recordable disclaimer of interest" stating that the federal government does not own or have interest in the land.

However, the April 2003 agreement requires Utah's rights-of-way requests be for roads outside of national parks, wilderness areas, wilderness study areas or wildlife refuges, and therefore the claims in the Canyonlands National Park and Emery County wilderness study areas could not be processed under the agreement.

Thus far, no right-of-way has been processed under the April 2003 agreement. Utah's first application, for the 99-mile Weiss Highway in Juab County, was withdrawn after records showed the road in question was actually constructed by the Interior Department in the 1930s.

Last month, Utah filed applications for the rights-of-way to two roads in Daggett County near the Wyoming border. Daggett County roads D28 and D30 are used to access injection wells that are part of Questar Corp.'s Clay Basin Underground Storage Facility and a camp where Questar employees live, according to the state ([Greenwire](#), Sept. 17).



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