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Activists ratchet up fight over Kane roads

Environmentalists' lawsuit says county reopened trails

By [Joe Bauman](#)

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Environmentalists have thrown another log on the long-burning conflagration over off-road vehicle trails in Kane County.

In a federal lawsuit, they claim Kane County is trying to usurp federal authority by opening routes that were legally closed to ORV traffic in Bryce Canyon and Zion national parks, Grand Staircase-Escalante National Monument, Glen Canyon National Recreation Area and wilderness study areas on Bureau of Land Management property.

A Kane County commissioner responded that the southern Utah county is only trying to regulate ORV use. If the federal government closed a traditional right-of-way, he added, that was done illegally.

The suit was announced Thursday in a conference call by Earthjustice, The Wilderness Society and the Southern Utah Wilderness Alliance. Earthjustice, a law firm focusing on environmental causes, which has offices in Denver and elsewhere.

Plaintiffs are The Wilderness Society, based in Washington, D.C., and SUWA, Salt Lake City. Defendants are Kane County and its commissioners.

"This case has arisen because Kane County and county officials . . . have flouted the United States Constitution and the management authority of the U.S. Department of Interior by opening up these fragile federal lands to destructive off-road vehicle (ORV) use," states the suit, a copy of which was provided by The Wilderness Society.

It asserts that Kane County passed ordinances opening roads that were closed to ORVs by the federal government, posted its own road signs and ripped down federal signs saying areas were closed.

The federal court in Salt Lake City confirmed the suit was filed.

Kristen Brengel of The Wilderness Society said that in the summer of 2003, Kane County officials removed signs in the national monument that prohibited ORV use. The BLM, which manages the national monument, "initiated a criminal investigation" but no legal action has been taken, she said.

Later, the county put up signs saying certain areas were open in the monument — areas that had been closed to ORV use by the federal government, she said. In August, Kane County

passed an ordinance governing ORV use on federal land, including parks, the monument and wilderness study areas, she added.

The suit is intended "to prevent this damage from occurring in these areas," Brengel added.

"The county is attempting to seize control of the management" of some of America's most spectacular natural lands, said Ted Zukoski, lawyer for Earthjustice. Under the Constitution's Supremacy Clause, he added, "federal law is supreme where it operates."

Routes the county says are open include a hiking trail in Zion National Park and hundreds of miles of routes in other areas, including the world-famous Coyote Gulch, he said.

Zukoski charged Kane County has acted "like a schoolyard bully." He called its ordinance unconstitutional.

Jana Smith, a resident of Kane County who is a retired outfitter and who has a grazing permit in the county, said commissioners try to represent that all county residents are united behind them in their road actions. That is not true, she said.

"Many of us are very distressed that public lands are being seriously abused" by ORV users, she said.

"They truly are some of the most spectacular and unique places in the country," said Heidi McIntosh of the Southern Utah Wilderness Alliance. "They are also ecologically fragile places," where roads can erode quickly and cause lasting damage, she added.

Ray Spencer, a Kane County commissioner, said he doesn't know where the environmentalists are getting their information.

"We've not done any more than we have traditionally done," he said in a telephone interview. "We just maintain our transportation system. We continue to do that."

The routes in question are Class D roads, he indicated. "We passed an ordinance recently regulating the use of ORVs within the county," said Spencer.

In his opinion, the ordinance "does more to help their (environmentalists') cause than anything else." It can help regulate abuses to the land, he said. The rule declared all the county's routes open to ORV use until designated otherwise, he said.

Kane County officials have been carrying out dialogues with their federal counterparts for 30 years on such issues, he said.

What if the federal government has closed an area to ORVs?

"If a traditional right-of-way was within it," Spencer said, "then they closed it illegally."

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