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

Article Last Updated: 10/08/2005 01:12 PM

Road ruling affirmed counties' rights

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Salt Lake Tribune

The 10th Circuit Court of Appeals recently ruled against Southern Utah Wildreness Alliance and the Bureau of Land Management in overturning a lower federal court's decision.

SUWA and the BLM's arguments and the lower court's decision, based on those arguments, were clearly inconsistent with existing law as it applies to R.S. 2477 rights of way. The 10th Circuit agreed with San Juan, Garfield and Kane counties that Congress granted rights of way across federal lands under terms and conditions of Utah state law rather than recent BLM standards.

The higher court recognized that "most of the transportation routes of the West were established under [R.S. 2477] authority." It is important to recognize that the counties asserted their R.S. 2477 roads to the BLM circa 1978, not to frustrate valid wilderness but to protect transportation systems providing historic and necessary public access.

SUWA's problem is that the county's transportation systems interfere with its desire for additional wilderness, which under the Wilderness Act of 1964 requires that the lands be "roadless." This explains why SUWA aggressively denigrates and challenges the existence of roads that have been enjoyed by the public for 39 years or longer.

It is also important to consider that, in spite of the existence of historic roads and extensive public access to areas, the lands are still considered pristine enough to qualify as wilderness.

The 10th Circuit was well aware it was dealing with "one of the more contentious land use issues in the West" in purposefully developing detailed guidance in its 112-page decision. This decision, combined with previous case law cited in the decision, offers precedent capable of resolving the majority of R.S. 2477 issues.

The decision does not require "mechanical construction" to establish a road. It can be constructed by "repeated use" alone; "maintenance" is not required and the "1910 coal withdrawal" does not invalidate R.S. 2477 roads.

Extensive continuous use by the public for a period of 10 years, as opposed to occasional or desultory use, establishes "acceptance" of a public highway. SUWA, the BLM and the counties will be held to these and other clear precedents in either asserting or denying the existence of R.S. 2477 roads.

The 10th Circuit also protected public lands and resources by requiring that counties not take unilateral action to "change" or "improve" a road beyond "routine maintenance" but must first consult with the BLM regarding any proposed change to a road. The court advised "in the event of disagreement the parties may resort to the courts."

Perhaps the most important part of the decision was the court's admonishment that the BLM and the counties have a responsibility and commitment to the common good and that they should exercise their respective rights and privileges in a spirit of mutual accommodation.

Let's hope that we can all move forward in the spirit suggested by the 10th Circuit Court of Appeals.

Mark Habbeshaw is a Kane County commissioner.